United States Court of Appeals

for the Second Circuit

APPENDIX

74-2191

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P/S

United States Court of Appeals

For the Second Circuit.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs-Appellants,

against

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendant.

DOCKET ENTRIES

Date	Proceedings
7/31/73	Filed complaint and issues summons
Aug. 8-73	Filed summons with marshals return: Served. American Telephone & Telegraph on 8-2-73.
Sep. 7-73	Filed ANSWER to complaint & counterclaim of deft.
Sep. 14-73	Filed stip & order that the filing by deft. of responsive pleadings, is ext. from 8-22-73 to 9-7-73. Knapp, J.
Sep. 21-73	Filed deft's first request for production of documents.
Sep. 21-73	Filed deft's first interrogs.
Oct. 5-73	Filed pltff's reply to deft's counterclaim.

DOCKET ENTRIES

Date	Proceedings
Oct. 5-73	Filed pltff's first interrogs.
Oct. 23-73	Filed deft's answers to interrogs.
Nov. 23-73	Filed pltff's to deft's first interrogs.
Jan. 16-74	Filed pltffs' second interrogs.
Feb. 5-74	Filed deft's supplemental answers to pltff's first interrogs.
Feb. 19-74	Filed stip & order that time of deft's to answer pltff's second, interrogs is ext. from 2-14-74 to 3-15-74. Knapp, J.
Mar. 1-74	Filed pltff's supplemental answers to deft's first interrogs.
Mar. 5-74	Filed def's second interrogs.
Mar. 15-74	Filed Answers to Deft. Amer. Tel. etc. to pltff's second Interrogs.
Mar. 29-74	Filed deft's request for admission of facts.
Apr. 16-74	Filed deft's notice of motion this action not to be maintained as a, class action ret. 4-26-74.
Apr. 16-74	Filed deft's statement Re: Class action.
Apr. 16-74	Filed deft's memorandum of points & authorities.
Apr. 19-74	Filed stip & order that deft's motion Re: Class action ret. 4-15-74, adj. to 5-17-74. Knapp, J.
Apr. 26-74	Filed pltff's response & objections to deft's request for admission of facts.
Apr. 26-74	Filed pltff's affidavit & notice of motion for separate trial of issues ret. 5-17-74.
Apr. 26-74	Filed pltff's memorandum of points & authorities in support of motion.
May 7-74	Filed deft's memorandum in answer to pltff's motion for separation, of issues.

DOCKET ENTRIES

Date	Proceedings
May 3-74	Filed Answers of Pltffs to Deft's 2nd Interrogs.
May 6-74	Filed Suppl. Answers to Pltffs' 1st Interrogs.
May 7-74	Filed pltff's affidavit & notice of motion to maintain action as a class action ret. 5-17-74.
May 7-74	Filed pltff's memorandum in support of motion ret. 5-17-74.
May 10-74	Filed pltff's memorandum of points & authorities in opposition to deft's motion.
May 20-74	Filed deft's response to pltff's cross motion Re: class action.
Jun. 25-74	Filed deft's supplemental memorandum RE: motion for class action.
Jun. 18-74	Filed Pltff's 2nd request for production of documents.
Jul. 3-74	Filed motion of the U.S. Equal Employment Opportunity Commission to file brief and participate in oral argument as amicus curiae.
Jul. 3-74	Filed deft's supplemental answers to pltff's second interrogs.
Aug. 2-74	Filed OPINION #41058. Opinion has demonstrated and we so certify-question is controlling, and one as to which "there is substantial ground for difference of opinion" and that its resolution would "materially advance ultimate termination of litigation." So Ordered. Knapp, J. (mn)
Aug. 5-74	Filed Suppl. ORDER. Two letter attached from Cohn, Glickstein, Lurie, Ostrin & Lubell & Raginowitz, Boudin & Standard dated 7/17/74, by respective counsel for pltffs be made part of record in case. So Ordered. Knapp, J. (mn)
9-12-74	Filed Brief for Defendant A.T.&T, Long Lines Department.
9-12-74	Filed Supplemental answers to plaintiffs second interrogatories.
9-12-74	FILED Pltff Memo of Law
9-12-74	Filed Affidavit with exhibits.

OPINION AND ORDER APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendant.

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

KNAPP, D.J. OPINION AND ORDER APPEALED FROM

The complaints in these unrelated class actions make quite similar allegations. They each allege inter alia that the several defendants have, in the treatment of pregnant employees, violated the proscription against discrimination on the basis of sex contained in Title VII of the Civil Rights Act of 1964.

Paragraph 7 of the CWA complaint alleges in part:

> "the defendant has promulgated and maintained policies * * * which limit the employment opportunities of its females employees because of sex by failing and refusing to provide equal rights, benefits and privileges to females under temporary disability due to pregnancy or childbirth or complications arising therefrom, as are made available to its male employees under temporary disability."

Paragraph 51 of the WICGU complaint (plaintiffs' first cause of action) alleges:

> "Defendants * * * have * * * discriminated against the plaintiffs in this action in the terms and conditions of employment because of sex, in that the health and hospitalization insurance plans negotiated and approved by defendant * * * offer substantially fewer benefits for pregnancy and pregnancy-related conditions than for other medical and surgical problems requiring hospital and medical care."

The remaining ten causes of action alleged in the WICGU complaint may fairly be characterized as variations on the theme of paragraph 51, the differences being in the particular defendant named

and the type of policy attacked - health and hospitalization insurance or disability benefit.

Motions were argued before me in both cases on May 21, 1974. In CWA the motions concerned class action treatment. In WICGU the major motion had to do with exhaustion of Title VII remedies.

While those motions were sub judice, the Supreme Court decided Geduldig v. Aiello, 42 U.S.L.W. 4905. We then scheduled argument as to whether in light of Aiello - especially footnote 20 of the opinion - this court should sua sponte dismiss the complaints in these actions. Having received briefs and heard argument, we so dismiss the complaints with leave to replead, and certify a question to the Court of Appeals.

In Aiello the Supreme Court held that California's disability insurance plan which excludes normal pregnancy from coverage does not violate the Equal Protection Clause of the Fourteenth Amendment. Thus, inter alia, the Court observed (at 4908):

> "We cannot agree that the exclusion of this disability from coverage amounts to invidious discrimination under the Equal Protection Clause. California does not discriminate with respect to the persons or groups who are eligible for disability insurance protection under the program."

The Court found legitimate and "wholly non-invidious" California's reasons for not wanting a more comprehensive program -

the state's desire to keep the contribution rate low, to keep the program self-supporting, and to provide adequate benefits for some disabilities rather than inadequate benefits for all (id). The Court further found "no evidence in the record that the selection of the risks insured by the program worked to discriminate against any definable group or class * * *." (id.)

The footnote (footnote 20) to the sentence just quoted provides - in our view - the key to the Court's decision. It flatly states that distinctions involving pregnancy do not constitute discrimination because of sex (or gender). In the first paragraph of that footnote the Court, in answer to arguments presented by the dissenting justices, observed:

> "The dissenting opinion to the contrary, this case is thus a far cry from cases like Reed v. Reed, 404 U.S. 71, and Frontiero v. Richardson, 411 U.S. 677, involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition - pregnancy - from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in Reed, supra, and Frontiero, supra. Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretext designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition."

OPINION AND ORDER APPEALED FROM

In the second paragraph, the Court synthesized its position:

> "The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups - pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes. The fiscal and actuarial benefits of the program thus accrue to members of both sexes."

At oral argument in the case at bar, counsel for both sets of plaintiffs and counsel for the EEOC as amicus curiae, insistently argued that Aiello is distinguishable on many grounds. The most significant distinction was said to be that the instant cases involve disparate treatment by employers - private as well as municipal of pregnant women in the workplace, while Aiello involved a social welfare policy created by state legislation. While deference is to be shown to legislative judgments on social welfare matters, the argument goes, no such deference to allegedly discriminatory employers is warranted under Title VII.

The flaw in this argument is that it begs the question. The threshold question is whether disparity of treatment between pregnancy related disabilities and other disabilities can be classified as discrimination because of sex (or gender). If, as footnote 20 seems to suggest, it cannot be so classified, then the further question of whether such disparity is justified - or less justifiable in the

employment context than in some other context - can never be reached.

In other words, if the Aiello Court had found that the California scheme did discriminate on the grounds of sex (or gender) but must nevertheless be upheld because of the deference due to California's sovereign right to make choices in methods of providing social welfare, the holding would clearly be inapplicable to a case arising under Title VII where no such deference is required. But such, as we read it, was not the holding of the Court. The holding was that California's treatment of pregnancy related disabilities did not in and of itself constitute a discrimination based on sex (or gender). Such a holding precludes relief under Title VII even more clearly than under the Fourteenth Amendment. Under the Amendment it would be open to pregnant women to argue that it was irrational to single them out as a class even if the singling out were not sex related. No such argument is open under Title VII, which deals only with discrimination "because of . . . sex." 42 U.S.C. §2000 e(2)(a)(1

Plaintiffs get scant help from the cases they cite for the proposition that discrimination on grounds of sex (or gender) mean something different when the Fourteenth Amendment is involved than when Title VII comes into play. The cases cited for that proposition are in our view more readily explained by the respective dates of decision than by the rubric under which they were decided. Thus, West Coast Hotel Co. v. Parrish, 300 U.S. 379, upholding protective

legislation, was decided in 1937, while Weeks v. Southern Bell Telephone (5th Cir.) 467 F.2d 95, which ruled the opposite way, was decided in 1972. Similarly, Goesaert v. Cleary, 335 U.S. 464, was decided in 1948. It seems a safe guess that, in light of Frontiero v. Richardson (1973) 411 U.S. 677, Phillips v. Martin Marietta Corp. (1971) 400 U.S. 542, and Sprogis v. United Air Lines (7th Cir. 1971) 444 F.2d 1194, cert. den. 404 U.S. 991, both West Coast Hotel and Goesart would be decided differently today. In brief, Aiello does not represent a retreat from the Court's modern view as to discrimination on grounds of sex (or gender), but - as footnote 20 plainly indicates - a finding that disparity of treatment based on pregnancy does not in and of itself constitute such discrimination.[1/]

Having come to this conclusion as to the effect of Aiello, the question arises as to what should be done with these lawsuits

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1/ By way of illustrating the Court's point, a woman's organization (e.g. a woman's club or actresses' workshop) could hardly be taxed with discriminating on grounds of sex (or gender) if its medical insurance policies provided no coverage for pregnancy-related disabilities. However such disparity of treatment of pregnant persons (who, not necessarily relevant so far as concerns the Amendment, happened to be women) might well run afoul of the equal protection demands of the Fourteenth Amendment, if it could be shown to involve state action and not to be economically or otherwise justifiable.

at this stage of the proceedings. A review of the complaints makes two things plain. First, both complaints were obviously drawn for the purpose of invoking the law as declared by the Aiello District Court (before it was reversed) to the effect that pregnancy-related disparity "in and of itself" constituted discrimination on grounds of sex (or gender). Second, if principles of "notice pleading" were to be applied, both complaints could be read as broad enough to permit proof of the type of "invidious discrimination" that would justify relief under either the Fourteenth Amendment or Title VII.

Any one of three courses of actions would therefore seem possible:

(1) The complaints could be construed under the principles of notice pleading and the parties be allowed to proceed to trial, with the result that the question of the correctness of our interpretation of Aiello could be presented to the Court of Appeals on a full trial record.

(2) The complaints could be construed - as the plaintiffs originally intended - to invoke the pre-Aiello law that disparity with respect to pregnancy-related disabilities in and of itself constituted discrimination on grounds of sex (or gender), and dismissed without leave to replead, thus giving plaintiffs an

appeal as of right to the Court of Appeals.

(3) The complaints could be so construed but dismissed with leave to replead, and the question of Aiello's application to the cases at bar certified to the Court of Appeals.

Upon reflection, only the third of these possible courses of action seems appropriate.

If the first possible course were followed, the plaintiffs would be in almost an impossible position of having to wage a "two front war", designed to present the Court of Appeals with a record calculated to take advantage of pre-Aiello law that pregnancy-related disparity in and of itself established a prima facie case under Title VII and designed at the same time to establish a fall back position that the particular practices pursued by these defendants - or some of them - were "invidious" and therefore in violation both of Title VII and of the Fourteenth Amendment. It goes without saying that the methods of proof appropriate to these two possible positions are quite disparate.

Moreover, oral argument on the problems presented by Aiello was devoted in large part to trying to ascertain how, if at all, the Court of Appeals could benefit by having the Aiello question presented to it on a full trial record. Counsel for both sets of plaintiffs and for EEOC as amicus curiae - although exhibiting the advocate's customary

reluctance to yield a point - finally conceded that months of pre-trial discovery and weeks of trial would produce no new information which would assist the Court of Appeals in determining what effect, if any, Aiello should have on these lawsuits.

Finally, absent an authoritative determination of Aiello's effect, it would be almost impossible to define the parameters of the appropriate classes and sub-classes. Plaintiffs, in each case, ask in effect for a class including all women of child bearing age. If our interpretation of Aiello be correct it would seem that the class in each suit would have to be confined to women presently pregnant plus those who had actually been denied pregnancy benefits. On the other hand if Aiello be inapplicable, the class might well be much more numerous.

The second possible course (dismissal without leave to replead) would present the Court of Appeals with several basically irrelevant questions, such as whether or not plaintiffs had been fairly treated in having their complaints so narrowly construed without an opportunity to replead. Moreover, should the Court affirm the dismissal, plaintiffs might be saddled with wholly unnecessary statute of limitations problems if they then attempted to obtain relief on the theory that defendants, or any of them, had engaged in "invidious" conduct.

We shall therefore follow the third possible course and certify to the Court of Appeals pursuant to 28 U.S.C. §1292(b) the question whether Aiello has established - for the purposes of these actions or either of them - that disparity between the treatment of pregnancy-related and other disabilities does not of itself constitute discrimination on the basis of sex (or gender) within the prohibition either of Title VII or of the Fourteenth Amendment.

We believe that this opinion has demonstrated - and we so certify - that this question is controlling, and one as to which "there is substantial ground for difference of opinion", and that its resolution would "materially advance the ultimate termination of the litigation".

SO ORDERED.

Dated: New York, New York
July 30, 1974.

WHITMAN KNAPP, U.S.D.J.

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendant.

The Complaint of Communications Workers of America, AFL-CIO, and Esther Skipper, individually and on behalf of all similarly situated non-supervisory female employees of American Telephone and Telegraph Company, Long Lines Department respectfully shows and alleges the following facts:

1.

a) This Court has jurisdiction of the within action under the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et. seq. (hereinafter referred to as the "Act"), particularly Section 2000e-5(e) and

(f) thereof; 28 U.S.C. 1343 (4), and 28 U.S.C. 2201 and 2202. Venue lies in this Court under Section 2000e-5(f) of the Act, and the Labor-Management Relations Act, as amended, 29 U.S.C. 141, et. seq.

b) This is a proceeding (1) for a declaratory judgment as to the rights of the parties; (2) for a preliminary and permanent injunction restraining and enjoining defendant from maintaining policies, practices, customs or usages of discrimination against plaintiffs and the class of female employees represented by plaintiffs because of their sex; (3) for a mandatory injunction directing defendant to take such affirmative action as may be necessary to eliminate the violations complained of; (4) for an order directing defendant to provide monetary relief, including back pay, to any of the plaintiffs or members of the class they represent for monetary losses sustained by reason of the violations complained of; and (5) for an order directing defendant to pay costs, reasonable attorneys' fees and for other appropriate relief.

2.

Defendant, American Telephone & Telegraph Company, Long Lines Department (hereinafter referred to as defendant "AT&T"), on information and belief, is a New York Corporation,

engaged in the business of rendering long distance and intercontinental telephone service to the general public. Defendant AT&T is an employer within the meaning of the Act.

3.

Plaintiff Esther Skipper is a non-supervisory employee of defendant AT&T. Plaintiff Skipper is a resident of Brooklyn, New York and is employed as a clerk.

4.

Plaintiff Communications Workers of America, AFL-CIO (hereinafter referred to as plaintiff "Union"), is an unincorporated labor organization, having an office and place of business in New York, New York, and is the collective bargaining representative for non-supervisory employees of defendants. Plaintiff Union is a person and a labor organization within the meaning of the Act.

5.

Plaintiffs bring this class action on behalf of themselves and all other non-supervisory female employees of defendant, and on behalf of all other former non-supervisory female employees of defendant subject to and injured by the discriminatory policies and actions complained of herein, pursuant to

COMPLAINT

Rule 23 of the Federal Rules of Civil Procedure. The class is more particularly described as all females who are employed or who were employed at any time since July 2, 1975, by defendant in a non-supervisory job classification, who have been, are, or will or may be adversely affected by the practices complained of herein. The class numbers several thousand, and it is thereby impractical to bring them all before the Court so that joinder of all members is impracticable. There are common questions of law and fact affecting the rights of the entire class of female employees by defendant. The claims of plaintiffs are typical of the claims of said class, and plaintiffs will fairly represent and adequately protect the interests of said class. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. The questions of law and fact common to the members of the lcass predominate over any questions affecting only individual members, and a common relief is sought, except as to the amount of damages suffered by each individual member of the class, and class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiff Union is now and has at all times relevant herein been a party to a collective bargaining agreement with defendant, fixing terms and conditions of employment for non-supervisory employees of

defendant. Plaintiff Skipper and the class she represents are now or were for varying periods of time since July 2, 1965 covered by said agreement.

6.

Plaintiff Union brings this action in accordance with its duty to represent fairly all employees in the collective bargaining unit pursuant to the Act and the Labor Management Relations Act, 1947, as amended by Public Law 86-257, 1959 (29 U.S.C. 141, et seq.).

7.

At all times since July 2, 1965, and continuing until the present time, the defendant has promulgated and maintained policies, practices, customs and usages which limit the employment opportunities of its female employees because of sex by failing and refusing to provide equal rights, benefits and privileges to females under temporary disability due to pregnancy or child birth or complications arising therefrom, as are made available to its male employees under temporary disability. Defendant's discriminatory practices and policies involve matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payments under health or disability in-

surance or sick leave plans; and by reason thereof, plaintiffs and the class they represent suffer discriminatory treatment because of sex.

8.

Plaintiffs allege that such policies and practices discriminate against female employees of defendant because of their sex and are in violation of the Act, particularly 42 U.S.C. 2000e-2(a).

9.

Plaintiff Union shows that it filed a sworn, written complaint with the Equal Employment Opportunity Commission, New York, New York, on April 12, 1972, alleging a continuing violation of the Act by defendant AT&T.

On July 6, 1973, the Commission mailed plaintiff Union a letter stating that under the provision of Section 706 (f) (1) of the Civil Rights Act of 1964, as amended, the plaintiff Union had ninety (90) days from the receipt of the Commission's letter to bring civil action in the appropriate federal district court. A copy of this letter is annexed hereto as Exhibit A and made a part hereof.

10.

The individual plaintiff and each member of the class represented by her have suffered and are continuing to suffer irreparable injury by reason of the discriminatory policies and practices of defendants. The plaintiffs have no plain, adequate or complete remedy at all to redress the wrongs alleged herein unless this Court affords them the equitable relief.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practical date, and upon such hearing:

1. Adjudicate and declare under the provisions of Rule 57 of the Federal Rules of Civil Procedure that said practices and policies of defendant discriminate because of sex and are in violation of Title VII of the Civil Rights Act of 1964, as amended.

2. Permanently restrain and enjoin defendant from continuing and maintaining said policies and practices in such a manner as to discriminate against female employees because of their sex.

3. Order the defendant to provide its female employees who have been, are now, or will be disabled because of pregnancy the same options accorded to any individual disabled because of

any temporary illness or sickness.

4. Preliminarily enjoin during the pendency of this action the defendant from enforcing said practices and policies which discriminate against female employees because of their sex.

5. Order defendant to provide monetary relief including back pay to the named plaintiffs and any member of the class that plaintiffs represent for monetary losses sustained by them by reason of the violation of the Act by defendant.

6. Provide such other and further relief as may be necessary to place the plaintiffs and each member of the class they represent in the same position they would have been in but for the unlawful employment practices of the defendants.

7. Allow the plaintiffs their costs herein, including reasonable attorneys' fees.

8. Provide such other and further relief as may be deemed just and proper by the Court.

Respectfully submitted,

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Washington, D. C. 20036

COMPLAINT

Attorneys for Plaintiff

By: _____
H. HOWARD OSTRIN

COMPLAINT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JUL 6 1973

TO:	FROM:
President Communications Workers of America 1925 K Street, N.W. Washington, D.C. 20006	Equal Employment Opportunity Comm. New York District Office 26 Federal Plaza, Room 4000 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:	EEOC REPRESENTATIVE	
☐ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE ☐ NO JURISDICTION ☐ FAILURE TO PROCEED	Ralph Munoz, District Counsel	
	TELEPHONE NUMBER 264-3840	CASE/CHARGE NUMBER TNY 0-0966

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

President
American Telephone & Telegraph Long Lines
32 Avenue of the Americas
New York, New York 10013

EXHIBIT A

EEOC FORM ASB 73 161

ANSWER AND COUNTERCLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

Defendant American Telephone and Telegraph Company, Long Lines Department (hereinafter "Long Lines") answers the Complaint as follows:

FIRST DEFENSE

1(a). Paragraph 1(a) of the Complaint contains no allegations of fact which require an answer.

1(b). Defendant Long Lines admits the allegations of paragraph 1(b) of the Complaint except that Long Lines specifically denies that any of its policies, practices, customs or usages constitute discrimination against plaintiffs and the class they purport to represent because of their sex.

2. Defendant Long Lines denies the allegations contained in paragraph 2 of the Complaint that it is a New York corporation; it states that it is an operating department of American Telephone and Telegraph Company which is a New York corporation. It admits the remaining allegations contained in paragraph 2 of the Complaint.

3. Defendant Long Lines admits the allegations contained in paragraph 3 of the Complaint that plaintiff Esther Skipper is a non-supervisory employee of Long Lines, employed as a clerk, as of the date of this Answer and Counterclaim; Long Lines is without information sufficient to form a belief as to the truth of the allegation that plaintiff Esther Skipper is a resident of Brooklyn, New York.

4. Defendant Long Lines admits the allegations contained in paragraph 4 of the Complaint, except that it states that plaintiff Communications Workers of America, AFL-CIO (hereinafter "CWA"), is the collective bargaining agent of those non-supervisory employees specified in Appendix 1 of the collective bargaining agreement between CWA and Long Lines dated July 18, 1971, and in effect as of the date of this Answer and Counterclaim.

5. Defendant Long Lines admits the following allegations contained in paragraph 5 of the Complaint: that plaintiffs are purporting to sue on their own behalf and on behalf of all other non-supervisory female employees of Long Lines who are or were employed by Long Lines at any time since July 2, 1965; that said female employees purportedly in the class number several thousand; that at all times relevant herein, plaintiff

CWA has been a party to collective bargaining agreements with Long Lines fixing terms and conditions of employment for non-supervisory employees of Long Lines, as defined in paragraph 4 of this Answer; and that plaintiff Skipper is covered by the current collective bargaining agreement between CWA and Long Lines at the date of this Answer and Counterclaim. The remaining allegations of paragraph 5 are argument and conclusions of law requiring no answer, and to the extent that such allegations contain assertions of fact, they are denied.

6. Paragraph 6 of the Complaint contains no allegations of fact which require an answer.

7. Defendant Long Lines denies each and every allegation of paragraph 7 of the Complaint except that it admits that pursuant to the "Plan for Employees' Pensions, Disability Benefits and Death Benefits" which governs the disability benefits afforded to all employees and which is applicable to all employees represented by plaintiff CWA pursuant to the current collective bargaining agreement in effect between Long Lines and CWA described in paragraph 4 of this Answer, sickness and injury disability benefits are not paid in connection with absences arising on account of certain conditions attendant to pregnancy, childbirth, or childrearing.

ANSWER AND COUNTERCLAIM

8. The allegations of paragraph 8 of the Complaint are argument and conclusions of law requiring no answer.

9. Defendant Long Lines admits the allegations contained in paragraph 9 of the Complaint.

10. Defendant Long Lines denies each and every allegation contained in paragraph 10 of the Complaint.

SECOND DEFENSE

The jurisdictional requirements of a civil action by plaintiffs under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., (the "Act" or "Title VII") as to matters alleged in the Complaint have not been met in that: (a) the alleged unlawful employment practices occurred in the City of New York, the State of New York and various other states, which have ordinances and laws prohibiting the unlawful employment practices alleged and establishing commissions to grant relief from such practices; (b) plaintiffs have not demonstrated that proceedings with respect to the matters alleged in the Complaint have been commenced under said city ordinances or state laws; (c) plaintiff CWA's charge to the Equal Employment Opportunity Commission (hereinafter "EEOC"), alleged to be the basis for the present action, was therefore not processed in accordance with the requirements of Section 706(c) of the Act and all EEOC proceedings thereon, including issuance of the notification of

right to sue to plaintiff CWA, are null and void.

THIRD DEFENSE

Section 706(e) of the Act provides in pertinent part that, "A charge under this section shall be filed within one hundred and eighty (180) days after the alleged unlawful employment practice occurred . . .", or within three hundred (300) days of an alleged violation if the person aggrieved has initially instituted timely proceedings with a state or local agency in a state which has a fair employment practices commission which can grant appropriate relief. Under Section 706(e), the claims of all individuals, whether named in the Complaint or as members of the class which plaintiffs purport to represent, which arise out of an alleged unlawful employment practice occurring more than 180 days prior to the filing of the charge on which the Complaint is based are barred, unless the 300-day limitation applies, in which case all such claims arising out of practices occurring more than 300 days prior to the date of the charge are barred. As stated above in the paragraph entitled "SECOND DEFENSE", plaintiffs CWA and Skipper have not demonstrated that they have utilized any state FEP law as required by Section 706(c) of Title VII. Therefore, all claims arising out of practices occurring more than 180 days prior to the filing of the charge which underlies this action are barred, pursuant to the limitations in

Section 706(e) of the Act.

FOURTH DEFENSE

The policies of Long Lines with respect to temporary disability referred to in the Complaint do not discriminate on the basis of sex within the meaning of the Act against plaintiffs nor against members of the class which plaintiffs purport to represent. Moreover, the "Plan for Employees' Pensions, Disability Benefits and Death Benefits" which governs the disability benefits afforded all employees of Long Lines has been duly qualified by Long Lines with the Workmen's Compensation Board in accordance with the provisions of the Disability Benefits Law of the State of New York, Section 211, Workmen's Compensation Law of the State of New York, as providing benefits "at least as favorable as the benefits required by" said Disability Benefits Law. Said Disability Benefits Law specifically provides in Section 205(3) that no disability benefits need be paid for any period of disability caused by or arising in connection with a pregnancy.

FIFTH DEFENSE

Section 713(b) of the Act provides in pertinent part:

ANSWER AND COUNTERCLAIM

> In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission . . . . Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect . . . .

Prior to 1971, EEOC consistently and publicly interpreted Title VII in various decisions and opinions as not requiring employers to treat pregnancy the same as they treat sickness and injury, including permitting employers to grant maternity leave without pay while providing sickness and injury leave with pay. Until EEOC made an abrupt and unwarranted reversal of those interpretations in 1971, Long Lines' policies and practices relating to pregnancy were clearly in good faith, in conformity with, and in reliance on EEOC interpretations and opinions of Title VII. Moreover, Long Lines' actions were in good faith, in conformity with, and in reliance or equal pay for equal work interpretations of the Wage and Hour Administrator which are applicable to Title VII pursuant to Section 703(h) of the Act.

ANSWER AND COUNTERCLAIM

SIXTH DEFENSE

The Long Lines policies with respect to temporary disabilities referred to in the Complaint provide benefits only where absence from work is by reason of actual disability. Accordingly, Long Lines is not liable to the plaintiffs, or to the members of the class which plaintiffs purport to represent, for any period or periods of absence from work in which actual disability was not present.

SEVENTH DEFENSE

Section 703(h) of the Act provides in pertinent part:

> It shall not be an unlawful employment practice under this Title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid employees of such employer if such differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206(d)).

Even if the Long Lines policy of not covering pregnancy and childbirth under its accident and sickness plan is considered to be a differentiation based on sex, it is a differentiation authorized by Section 6(d) of the Fair Labor Standards Act, as amended, and therefore it is not an unlawful employment practice under Title VII.

ANSWER AND COUNTERCLAIM

EIGHTH DEFENSE

To the extent that it has been alleged that the failure to include certain absences from work which are related to pregnancy, childbirth, or childrearing, within plans offering disability payments for sickness or injury constitutes discrimination on the basis of sex, such failure is based upon a rational and neutral business justification under the Act.

COUNTERCLAIM AGAINST COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Defendant American Telephone and Telegraph Company, Long Lines Department (hereinafter "Long Lines") hereby counterclaims against plaintiff Communications Workers of America, AFL-CIO (hereinafter "CWA") which currently is, and since July 2, 1965, has been, a party to collective bargaining agreements affecting the compensation, terms, conditions, and privileges of employment of non-supervisory employees of Long Lines, as defined in paragraph 4 of the Answer herein.

In specification of such Counterclaim, Long Line states as follows:

COUNT ONE

1. Long Lines' policies and practices involving matters such as disability payments applicable to employees who are absent

from work on account of pregnancy, childbirth, or childrearing, and other policies affecting the compensation, terms, conditions and privileges of employment of female employees are applied to all female employees represented for collective bargaining purposes by plaintiff CWA, solely as a result of a Plan for Employees' Pensions, Disability Benefits and Death Benefits. Such plan does not include within its provisions for sickness and injury disability benefits certain absences arising on account of pregnancy, childbirth, or childrearing. Said plan has been a subject for bargaining within the context of current and past collective bargaining agreements since July 2, 1965, and such agreements have been freely and knowingly entered into between Long Lines and CWA, with the current agreement having become effective on July 18, 1971, and applicable to the period July 18, 1971 to July 17, 1974.

2. If Long Lines' practice of not paying sickness and injury disability benefits for certain absences on account of pregnancy, childbirth, or childrearing is determined to be a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. ("the Act" or "Title VII") and this Court determines that relief pursuant to the provisions of Section 706(g) is appropriate, complete and appropriate relief can be obtained only if directed against all parties to the

aforementioned current collective bargaining agreement.

3. In the event that the terms of the current and/or previous collective bargaining contracts and plan governing disability benefit practices are determined to be in violation of the Act and if Long Lines is held liable in damages or otherwise to the plaintiffs herein or the members of a class which they purport to represent for acts or omissions taken pursuant to such collective bargaining agreement and plan, Long Lines hereby asserts a right under the Act to require plaintiff CWA to share in an appropriate allocation of such liability and a right to contribution from and indemnification by it as to any such liability.

COUNT TWO

4. Long Lines hereby incorporates the allegations of paragraph 1 and 2 of COUNT ONE above as fully as if set forth in full and repeated herein.

5. In the event that the terms of the current and/or previous collective bargaining contracts and disability benefits plan are determined to be in violation of the Act and Long Lines is held liable in damages or otherwise to the plaintiffs herein or the members of a class which they purport to represent for acts or omissions taken pursuant to such collective bargain-

ing agreement and plan, Long Lines hereby asserts a common law right of contribution from and indemnification by plaintiff CWA as to any such liability.

COUNT THREE

6. Long Lines hereby incorporates the allegations of paragraph 1 and 2 of COUNT ONE above as fully as if set forth in full and repeated herein.

7. In the event that the terms of the current and/or previous collective bargaining contracts and disability benefits plan are determined to be in violation of the Act and Long Lines is held liable in damages or otherwise to the plaintiffs herein or the members of a class which they purport to represent for acts or omissions taken pursuant to such collective bargaining agreement and plan, Long Lines hereby asserts a right of contribution from and indemnification by plaintiff CWA as to any such liability under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185.

COUNT FOUR

8. Long Lines hereby incorporates the allegations of paragraphs 1 and 2 of COUNT ONE above as fully as if set forth in full and repeated herein.

9. In the event that the terms of the current and/or previous collective bargaining contracts and disability benefits plan are determined to be in violation of the Act and Long Lines is held liable in damages or otherwise to the plaintiffs herein or the members of a class which they purport to represent for acts or omissions taken pursuant to such collective bargaining agreement and plan, Long Lines hereby asserts a right of contribution from and indemnification by plaintiff CWA as to any such liability based upon CWA's breach of its duty to represent fairly all of the employees in the collective bargaining unit pursuant to the Act and the Labor-Management Relations Act, 29 U.S.C. §141 et seq.

WHEREFORE, Defendant American Telephone and Telegraph Company, Long Lines Department, respectfully prays that this Court enter a judgment dismissing the Complaint and awarding Long Lines its costs in this action.

In the alternative, Long Lines respectfully prays that if the plaintiffs, or any of them, or any members of a class which they purport to represent, obtain a judgment for damages or otherwise, that such judgment provide for appropriate allocation of such liability and appropriate contribution towards the satisfaction of the judgment and indemnification of Long Lines

ANSWER AND COUNTERCLAIM

in accordance with the terms of COUNTS ONE through FOUR of the above-stated COUNTERCLAIM.

Respectfully submitted,

Jim G. Kilpatric
32 Avenue of the Americas
New York, New York 10013
(212) 393-6706

Thompson Powers

James D. Hutchinson

Kenneth I. Jonson
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-4800

Attorneys for American Telephone
and Telegraph Company,
Long Lines Department

REPLY TO COUNTERCLAIM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

Plaintiff, Communications Workers of America, AFL-CIO (hereinafter referred to as plaintiff union), replies to defendant American Telephone & Telegraph Company, Long Lines Department's counterclaim as follows:

FIRST DEFENSE

The counterclaim fails to state a claim against the plaintiff union upon which relief can be granted.

SECOND DEFENSE

This Court lacks subject matter jurisdiction over the matters alleged in defendant's counterclaim in that defendant has failed to meet the jurisdictional prerequisites of Title VII of the Civil Rights Act of 1964, as amended, especially Section 706 (b), (c), (e) and (f) thereof.

THIRD DEFENSE

Under each and all of the counts contained in defendant's counterclaim, the plaintiff union, as collective bargaining agent, cannot be held responsible for monetary liability either in the form of back wages or damages as a matter of law.

REPLY TO COUNTERCLAIM

FOURTH DEFENSE

Replying specifically to the counterclaim, plaintiff union states as follows:

1. Answering paragraph 1, plaintiff union admits that the American Telephone & Telegraph Company, Long Lines Department policies and practices referred to therein are, in part, a result of a "Plan for Employees' Pensions, Disability Benefits and Death Benefits", but denies that such plan is the sole basis for application of the company's policies and practices to all female employees represented for collective bargaining purposes by plaintiff union. Plaintiff admits the second and third sentences of paragraph 1.

2. The allegations of paragraph 2 of the counterclaim are argument and conclusions of law requiring no reply.

3. There are no allegations of fact contained in paragraph 3 of the counterclaim requiring an answer; plaintiff union denies that defendant is entitled to the relief sought therein as a matter of law.

4. Plaintiff union hereby incorporates its reply to paragraphs 1 and 2 of the counterclaim above as fully as if set

forth in full and repeated herein.

5. There are no allegations of fact contained in paragraph 5 of the counterclaim requiring an answer; plaintiff union denies that defendant is entitled to the relief sought therein as a matter of law.

6. Plaintiff union hereby incorporates its reply to paragraph 1 and 2 of the counterclaim above as fully as if set forth in full and repeated herein.

7. There are no allegations of fact contained in paragraph 7 of the counterclaim requiring an answer; plaintiff union denies that defendant is entitled to the relief sought therein as a matter of law.

8. Plaintiff union hereby incorporates its reply to paragraphs 1 and 2 of the counterclaim above as fully as if set forth in full and repeated herein.

9. There are no allegations of fact contained in paragraph 9 of the counterclaim requiring an answer; plaintiff union denies that defendant is entitled to the relief sought therein as a matter of law.

WHEREFORE, plaintiff union prays that the counterclaim

be dismissed and that it be granted the relief prayed for in its complaint.

Respectfully submitted,

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL
1370 Avenue of the Americas
New York, New York 10019

KANE & KOONS
1100 Seventeenth Street, N.W.
Washington, D. C. 20036

Attorneys for Plaintiffs

/S/
By: _____
H. HOWARD OSTRIN

* * *

FIRST INTERROGATORIES OF DEFENDANT AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT

(Excerpts: Numbers 2, 3, 31 and 35)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

---

* * *

2. For the named, individual plaintiff, state: * * *

(d) Whether she has ever been pregnant;

(e) If so, for each such pregnancy;

(1) The dates of such pregnancy;

(2) The job or jobs, if any, held during such pregnancy;

(3) How such pregnancy was terminated;

(4) What complications, if any, arose during such pregnancy;

(5) The identity of the attending physician;

(f) If she has ever given birth to any children, for each such birth state:

(1) The Date and place of birth;

(2) What complications, if any, arose in connection with each birth;

---

* For the convenience of the Court the Interrogatories of Defendant, and Plaintiffs' Answers and Supplemental Answers have been included together herein, despite the fact that Plaintiffs' Answers and Supplemental Answers were not necessarily filed in chronological order.

(3) The identity of the physician attending such birth;

(4) The date, if applicable, when the individual plaintiff left her job prior to such birth;

(5) The date, if applicable, when the individual plaintiff returned to work after such birth;

(6) The date when the individual plaintiff was ready, willing and able to return to work after such birth;

(7) The advice, if any, of the attending physician as to the date the individual plaintiff was required to leave work by reason of physical disability prior to such birth, and the date she was able to return to work after such birth;

(g) In detail, all sickness benefits for maternity or related benefits provided to her by Long Lines;

* * *

3. Who of the named plaintiffs have filed charges with the United States Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency alleging sex discrimination by Long Lines? Attach hereto copies of all such charges and all documents including correspondence, memoranda, and agency decisions related to such charges.

* * *

31. Have any proposals relating to sickness benefits

for maternity or related benefits been submitted by CWA to Long Lines during any collective bargaining since July 2, 1965? If so, attach hereto a copy of each such proposal.

* * *

35. Have any proposals been made to Long Lines by CWA in collective bargaining since July 2, 1965, which would have had the economic consequence or increasing the overall labor costs of Long Lines, to include wages, fringe benefits, and improvements in working conditions and privileges? If so, attach hereto a copy of each such proposal or writing evidencing the substance of such proposal.

* * *

ANSWERS OF PLAINTIFFS
TO DEFENDANT'S FIRST
INTERROGATORIES

(Excerpts: Numbers 2, 3 and 31 with Exhibits)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

* * *

2. * * *

(d) Yes.

(e) (1) February, 1972 to October 28, 1972.

(2) TG3.

(3) Birth, baby girl, October 28, 1972.

(4) None.

(5) Doctor Kodanmen.

(f) (1) Brooklyn Hospital, October 28, 1972.

(2) None.

(3) Attending physician, Brooklyn Hospital.

(4) August 28, 1972.

---

* For the convenience of the Court the Interrogatories of Defendant, and Plaintiffs' Answers and Supplemental Answers have been included together herein, despite the fact that Plaintiffs' Answers and Supplemental Answers were not necessarily filed in chronological order.

(5) February, 1973.

(6) February, 1973.

(7) No advice given.

(g) None. * * *

* * *

3. Plaintiff Communications Workers of America, AFL-CIO (hereafter "CWA") filed a Charge with the United States Equal Employment Opportunity Commission ("EEOC" hereafter) in April, 1972. This Charge was referred by the EEOC to the New York State Division on Human Rights for the statutory 60-day period on April 19, 1972. A copy of the Charge is attached hereto as Exhibit A-1. * * *

* * *

31. * * * Annexed hereto as Exhibits H-1 and H-2 are documents evidencing plaintiff CWA's attempt to include in collective bargaining negotiations with defendant in 1971 the question of non-discriminatory treatment of disabilities and leaves due to pregnancy or maternity.

* * *

EXHIBIT A-1 ANNEXED TO PLAINTIFFS' ANSWERS TO FIRST INTERROGATORIES

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TNY2-0966

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) indicate Communications Workers of America Phone Number 337-7711

Street Address 1925 K Street, N. W.

City Washington, D.C. State _____ Zip Code 20006

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name American Telephone and Telegraph Long Lines

Street address 32 Avenue of the Americas

City New York State New York Zip Code 10013

AND (other parties if any) American Telephone and Telegraph
195 Broadway
New York, New York

4 Have you filed this charge with a state or local government agency? Yes ☐ When _____ (MONTH DAY YEAR) No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month CONTINUING Day _____ Year _____

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

Respondents' policies and practices involving matters such as commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan are not applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date April 12, 1972 _____ (Sign your name) (President)

Subscribed and sworn to before me this 12th day of April 1972

Ebba H. Muller (Name) My Commission Expires May 14, 1973 Notary Public (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124-R0001

M EEOC-5 (REV. 7-68)

EXHIBIT H-1 ANNEXED TO PLAINTIFFS' ANSWERS TO FIRST INTERROGATORIES

October 18, 1971

Mr. Robert D. Lilley, Executive
Vice President - AT&T
195 Broadway
New York, New York 10007

Dear Mr. Lilley:

Subject: Maternity Benefits

I have recently had our Staff conduct a thorough review of recent developments in the area of maternity benefits and maternity leaves. In particular we have looked at recent legal developments which have occurred within the Equal Employment Opportunity Commission and the Federal and State Courts. It appears quite clear to us that two propositions on this subject have evolved:

1. A female employee cannot be forced to take maternity leave after a certain stage of pregnancy has been reached.

2. Physical disability resulting from, or arising out of, pregnancy and/or childbirth must be treated in the same fashion as any other disability.

As you undoubtedly are aware, the Bell System Contracts, at least in part, do not conform to these recent legal developments. It is my view, and I am sure it is one in which you will concur, that it would be far better to work out necessary changes through collective negotiations, rather than through complicated and exceedingly costly legal proceedings. I am therefore, taking this opportunity to request that we arrange for discussions and negotiations on these matters as soon as possible.

I would appreciate your prompt consideration of this request. Thank you.

Sincerely yours,

/S/

Joseph A. Beirne,
President

EXHIBIT H-2 ANNEXED TO PLAINTIFFS' ANSWERS TO FIRST INTERROGATORIES

Robert D. Lilley
EXECUTIVE VICE PRESIDENT

3.35
x 1.12.234
x 6.

October 28, 1971

Mr. Joseph A. Beirne, President
Communications Workers of America
1925 K Street, N.W.
Washington, D. C. 20006

Dear Mr. Beirne:

This is to acknowledge receipt of your letter of October 18, 1971 with respect to maternity leaves. As in other matters of this nature, I have asked Mr. Reed to get in touch with Mr. Hackler to explore the various aspects of this subject.

Sincerely,

Robert D. Lilley

RECEIVED
NOV 1 1971
PRESIDENT

PLAINTIFFS' SUPPLEMENTAL ANSWERS TO DEFENDANT'S FIRST INTERROGATORIES

(Excerpts: Numbers 3 and 35 with Exhibits)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

---

* * *

Interrogatory No. 3. Attached hereto as Exhibit 1 is a copy of a letter received from the Equal Employment Opportunity Commission ("EEOC") setting forth the date on which Plaintiffs' change with said agency was referred to the New York State Division of Human Rights pursuant to the requirements of Section 706 (c) of 42 U.S.C. 2000e, et seq. * * *

* * *

Interrogatory No. 35. * * * CWA's statistical data has indicated, and its bargaining efforts are geared to, a rough rule that one cent ($.01) per hour equals $11 million dollars per year.

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* For the convenience of the Court the Interrogatories of Defendant, and Plaintiffs' Answers and Supplemental Answers have been included together herein, despite the fact that Plaintiffs' Answers and Supplemental Answers were not necessarily filed in chronological order.

EXHIBIT 1 ANNEXED TO PLAINTIFFS' SUPPLEMENTAL ANSWERS TO FIRST INTERROGATORIES

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007

NOV 14 1973

Cohn, Glickstein, Lurie, Ostrin & Lubell
Attn: Mary K. O'Melveny
1370 Avenue of the Americas
New York, New York 10007

Re: Charge Nos. TNY 2-0963, TNY 2-0966

Dear Ms. O'Melveny:

I am writing in response to your letter dated October 18, 1973 requesting information on the above-referenced charges. These charges were received by the New York State Division of Human Rights on April 19, 1972.

If we can be of further assistance, please let us know.

Very truly yours,

Ralph Munoz

Ralph Munoz,
District Counsel

PLAINTIFFS' FIRST INTERROGATORIES

(Excerpts: Numbers 1, 3, 4, 5, 6, 7-C, 12, 15, 16 and 19)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

---

* * *

1. State the number of non-supervisory females presently employed by the defendant in each of its departments, lines of progression or job classifications as of July 2, 1965, and on that date for each succeeding year, and as of the date on which these interrogatories are answered.

* * *

3. State whether the company has ever terminated an employee since July 2, 1965, for being pregnant and if so, give the names, addresses and termination dates for each such person.

4. Identify any studies possessed by the company or of which it is aware, which is now in existence or is in the process of being completed which consider the ability or inability of pregnant women to perform activities of the type required of women employees at American Telephone & Telephone [sic]

---

* For the convenience of the Court the Interrogatories of Plaintiffs, and Defendant's Answers and Supplemental Answers have been included together herein, despite the fact that Defendant's Answers and Supplemental Answers were not necessarily filed in chronological order.

Company, Long Lines Department or as to the operating of maternity leave in such a company. For each study, provide the following information:

(a) the purpose of each study; * * *

(e) a brief summary of the results of each such study.

5. List all categories of leaves of absence recognized by the company since July 2, 1965. With respect to each such category of leave, state:

(a) the date of its institution and, where applicable, the dates of discontinuance and reasons therefor;

(b) the jobs within all departments to which it applies.

6. State the rules and regulations applicable to each category of leave described in your response to interrogatory #5 above, including:

(a) where such rules appear in writing, please attach a copy of any such written documents;

(b) the length of time permitted or required for each such leave capacity;

(c) the number of such leaves permitted any one employee;

(d) the effect of such leave on: (1) accumulated days of vacation time; (2) seniority and job status; (3) wage level or other compensation arrangement, stating specifically whether such leave is with or without pay; (4) any other effects of such leave;

(e) the procedures prescribed for applying for and receiving such leave and whether such procedures are mandetory or voluntary on the employee;

(f) the procedures prescribed for returning from such leave.

7. Are there any group health, accident sickness or life insurance plans available to your employees by virtue of their employment? If so, please indicate: * * *

(c) the benefits received by a female employee who is on maternity leave under the plan; * * *

* * *

12. State whether or not American Telephone & Telegraph Company, Long Lines Division permits pregnant employees or employees on maternity leave to make use of sick leave benefits, including sick pay to the same degree as of other illnesses. If the company does not allow such use, explain why and state what information or data, of which the company is aware or in possession which supports its decision.

* * *

PLAINTIFFS' FIRST INTERROGATORIES

15. Has any employee since July 2, 1965, ever lost any seniority because she was on maternity leave? * * *

16. Has any female employee since July, 1965, who was on maternity leave and thereafter re-applied for work been forced to take a lower paying job than she was on prior to her pregnancy leave? * * *

* * *

19. Please state all applicable provisions of group health, accident, sickness or life insurance plans described in your response to Interrogatory #7 above which refer to the term "actual disability" and to all provisions in said plans which describe said term and the manner of said description. In connection with the above, please indicate:

(a) The factors which are considered in determining whether an employee's absence from work is due to "actual disability";

(b) The person or persons in the employ of defendant, American Telephone & Telegraph Company, Long Lines Department, who are authorized to make such a determination, if any.

(c) The weigth, if any, given to medical opinion and diagnoses of doctors attending and/or treating employees who are pregnant or suffering from pregnancy - related illnesses and

must be temporarily absent from work by reason thereof.

(d) The nature of the authority, including all documentation thereof, which defendant relies upon in determining whether "actual disability" is present for purposes of determining whether an employee's temporary absence is subject to the provisions of these plans.

* * *

DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts: Numbers 1, 3, 4, 5, 6, 7-C, 12, 15, 16 and 19 with Exhibits)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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1. * * *

	Department						
Date	Acctg	Eng	Mktg	Plant	Traffic	Other	Total
12-31-71	1536	1424	1007	1471	2534	1588	9,560
9-30-73	1348	1338	1082	2121	2793	1534	10,216

* * *

3. * * * Since October 15, 1971, the defendant has not terminated an employee for being pregnant.

4. * * * In regard to any studies as to the operation of maternity leave, the defendant has obtained from its own files the information reflected below.

For a period from October 1, 1972, to January 31, 1973:

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* For the convenience of the Court the Interrogatories of Plaintiffs, and Defendant's Answers and Supplemental Answers have been included together herein, despite the fact that Defendant's Answers and Supplemental Answers were not necessarily filed in chronological order.

DEFENDANT'S ANSWERS TO INTERROGATORIES

(a) Such information was compiled in answer to a request by American Telephone and Telegraph Company. * * *

(e) Summary of Studies:

1. How many maternity leaves of absence were granted with an expiration date falling between 10-1-72 and 1-31-73? 205
2. Of those in No. 1, how many were re-employed? 112
3. Of those in No. 1, how many were not re-employed? 93
4. How many of those not re-employed were due to personal choice not to return or because no job was available? 93

5. The information requested as to the period prior to October 15, 1971, is irrelevant to the issues in this action. See "Third Defense" of defendant's Answer filed herein. The leaves of absence recognized by Long Lines since October 15, 1971 are:

A. Type	Date of Institution
Sickness Eligible and Noneligible	Prior to 1913

DEFENDANT'S ANSWERS TO INTERROGATORIES

Personal	Approximately 1914
Military	1914
Maternity	Early 1930's
Union	1940's

B. Leaves apply to all jobs.

6. The rules and regulations applicable to each category of leaves are covered in Executive Instructions II, Section 1, Page 8 (attached hereto as Exhibit 1-A; Supervisor's Guide to Benefits, Section 8, and the policy directive issued on June 9, 1971 by E. H. Crabb, Vice President-Personnel, Long Lines Department (attached hereto as Exhibit 1-B); the Agreement between plaintiff CWA and defendant (attached hereto as Exhibit 1-C); and the Plan for Employees' Pensions, Disability Benefits and Death Benefits (attached hereto as Exhibit 1-D).* * *

7. Yes. Copies of employee booklet covering group health, accident, sickness and life insurance plans are attached hereto. * * *

(c) A female employee who is on maternity leave receives the same benefits under the plans attached hereto as Exhibits 2-A, 2-B and 2-C as other employees. Coverage under the Basic Medical Plan is continued at the em-

ployee's option by paying monthly premiums while on leave. Extraordinary Medical Expense Plan coverage and Group Life insurance coverage are provided by the Company for a period of up to 12 months while on leave at no cost to the employee. (See Exhibits 2-A, 2-B and 2-C). * * *

* * *

12. If a pregnant employee, while on active duty status, becomes disabled for work for any reason other than normal childbirth and confinement, sickness disability benefits, including "sick pay" as provided in the Benefit Plan, will be paid for the period of actual disability the same as for any other illness. The rules, policies and procedures concerning maternity leave, sick leave, "sick leave" benefits, and "sick pay" are fully explained in Exhibits 1-A, 1-B, 1-C and 1-D.

* * *

15. No employee on maternity leave has ever lost any seniority because she was on maternity leave. However, an individual does not accrue service or seniority credit during the period of such leave in excess of the first month. All matters dealing with the operation, rules and procedures governing all leaves are treated in Exhibits 1-A, 1-B, 1-C and 1-D. * * *

DEFENDANT'S ANSWERS TO INTERROGATORIES

16. * * * Since October 15, 1971, no employee who was on maternity leave and re-applied for work has been forced by the Company to take a lower paying job.

* * *

19. See generally Exhibits 2-A, 2-B and 2-C. If plaintiffs are seeking information concerning the determination of actual disability under Exhibit 1-D, the following is provided:

(a) Factors considered in determining disability under the Plan include all available and pertinent medical information, the employee's medical and employment history, the relevant job requirements and company policy.

(b) The medical staff of defendant and, ultimately, the Employees' Benefit Committee determine whether a disability exists which is covered by the Plan.

(c) Consideration is given to the opinion of the attending physician.

(d) See (a).

* * *

EXHIBIT 1-A ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts from Executive Instructions No. 2 - Page 8)

8. Absence with Pay

To grant employees permission to be absent with pay; and to authorize salary payments, except benefit payments (see Item 10 below), to employees during absence for:

a. Jury service.	Supervisor in direct line of authority
b. Military service:	
(1) Not to exceed one month.	Supervisor in direct line of authority
(2) Exceeding one month.	Benefit Committee
Note: Amount and duration of payment shall be in accordance with a schedule established by the Vice President–Personnel.	
c. Other causes, for periods:	
(1) Not to exceed one week.	Supervisor in direct line of authority
(2) Not to exceed two weeks.	Supervisor at Dist level or above Comm Mgr Sls Mgr Data Proc Mgr Supv Ofc Svc Ofc Svc Mgr (A)
(3) Not to exceed three weeks.	Area Dept Head Hq Stf Head
(4) Not to exceed one month.	GM VP
(5) Exceeding one month.	Pres

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

VIII LEAVES OF ABSENCE

DEFINITION OF LEAVE OF ABSENCE

The term Leave of Absence means approved absence other than absence during which sickness or accident benefits are paid.

The term Leave of Absence, for the purpose of payroll procedure and for the administration of the Benefit Plan, shall mean leave granted to an employee for a period in excess of one month or for any period following the expiration of disability benefit payments. Leaves of Absence are restricted to regular employees.

TYPES OF LEAVES

Leaves of Absence are of three types:

1. *Disability Leave*—Authorized because disability of the employee goes beyond the period for which he is paid benefits.
2. *Military Leave*—Authorized for employee to enter the armed forces for active duty or training duty.

   Note: See MILITARY LEAVES—SPECIAL CONSIDERATIONS, Page 893.
3. *Miscellaneous Leave*—Authorized for reasons other than (1) and (2) above.

WHEN A LEAVE IS REQUIRED

A Leave of Absence, granted by the Benefit Committee, is required for:

a. Any period of continuous absence of more than one month.

b. Any period of absence after the expiration of sickness or accident benefits under the Plan, whether or not the employee is receiving other benefit payments.

REASONS FOR RECOMMENDING LEAVES

The following indicate generally the reasons for which Leaves of Absence *may* be granted at the discretion of the Committee. The Committee *may* also authorize extensions of leaves as appropriate.

a. *Disability Leave:*

1. Employee's disability continues after the expiration of benefit payments under the Plan.
2. Employee's service does not entitle him to benefit payments under the Plan.

b. *Military Leave:*

1. To enter the armed forces for *active* duty or *training* duty.

   Note: See MILITARY LEAVES—SPECIAL CONSIDERATIONS, Page 893.

c. *Miscellaneous Leave:*

1. To care for disabled member of employee's family.
2. For extended vacation.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

3. For rest and change of environment (where circumstances justify it), and the Medical Department certifies the employee as physically able to work.

4. For attendance at a school, college or other institution of learning.

5. Pending employment when moving to a distant city and intending to apply for work with a Bell System Company.

6. On account of pregnancy. See instructions on p. 894.

7. To accept a temporary assignment with the Government upon its request to the Company.

8. To enter the Peace Corps.

9. To devote full time to Union business.

10. Volunteers in Service to America.

11. Any other absence from Company service, when in the opinion of the Committee the facts are sufficient to warrant such action.

Note: A Miscellaneous Leave of Absence should not be recommended for the purpose of establishing eligibility for "vesting" rights in a pension; for an employee to seek non-Bell System employment in any location; to engage in or establish a business venture; or for other reasons of a similar nature.

APPLICATION FOR LEAVE

Upon request for a Leave of Absence, Form U-271, Application for Leave of Absence as shown on Page 897 of this Section, shall be prepared in triplicate by the department. When possible, all copies should be signed by the requesting employee before forwarding through the lines of organization to the department or executive head for review, signature and any special recommendation. All three copies of any recommended application shall be forwarded by the department to the Secretary for submission to the Committee.

ABSENCE WITHOUT PAY FOR ONE MONTH OR LESS

Absence for one month or less (except following expiration of benefits) may be approved by the department.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

892

Revised 3/67

EXTENSION OF LEAVE OF ABSENCE

If an employee who has been excused for a period of one month or less requests extension of the absence and the entire period of absence, including the extension, will exceed one month, the approval of the Committee shall be required. Application for leave shall be submitted for the entire absence.

NOTICE OF ELIGIBILITY FOR SERVICE CREDIT AND BENEFITS WHILE ON LEAVE

In granting a Leave of Absence, the Committee determines whether the period of absence is credited and whether eligibility for benefits continues during the absence. The period credited and/or the period of such eligibility, if granted, shall be indicated on Form U-271.

ELIGIBILITY FOR SERVICE CREDIT DURING LEAVE

A Leave of Absence to cover absence immediately following the expiration of Sickness Disability Benefits shall be granted without eligibility for service credit.

Employees granted Military Leave who have reemployment rights under law and apply for reinstatement within the period specified will receive, upon reinstatement, full service credit for the period of military service required by law.

For all Miscellaneous Leaves of Absence, the employee will usually receive credit for the first month of absence.

ELIGIBILITY FOR SICKNESS BENEFITS DURING LEAVE

~~Military Leaves are granted with eligibility for Sickness Dis-~~ ability Benefits at the termination of the leave, if the employee is then disabled, in accordance with the provisions of the Plan.

In all other cases, unless authorized by Committee, an employee shall not be eligible for Sickness Benefits during a Leave of Absence.

ELIGIBILITY FOR DEATH BENEFITS DURING LEAVE

Military Leaves are granted with eligibility for Death Benefits in accordance with the provisions of the Plan. Should an employee die while on such leave, Sickness Death Benefits will be paid to a qualified beneficiary. Benefits shall be computed at the employee's rate of pay in effect at the time the leave began.

Leaves to enter the Peace Corps shall be granted with credit for one month and eligibility for Death Benefits to employees with dependents.

All employees granted a Leave of Absence for illness following the expiration of Sickness Disability Benefits shall be eligible for Death Benefits. Eligibility may also be granted by the Committee for a Leave of Absence approved for other reasons.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S
ANSWERS TO INTERROGATORIES

BENEFIT ELIGIBILITY AT TERMINATION OF MILITARY LEAVE

If an employee is eligible for Sickness Disability Benefits upon the termination of a Military Leave, such benefits shall be based upon the employee's Net Credited Service at time of reinstatement. Benefits shall be computed at the employee's rate of pay in effect at the time of reinstatement.

MILITARY LEAVES SPECIAL CONSIDERATIONS

There may be military-related absences for which Military Leaves will not be approved. Examples—services as an officer in the Public Health Service or the Coast and Geodetic Survey and services of a Conscientious Objector in civilian work associated with national health. In the event of employee inquiry related to proposed absences such as the above, the assistance of the Secretary of the Long Lines Department Benefit Committee or his representatives should be promptly secured.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

LONG LINES POLICY —MATERNITY

A pregnant employee may remain in active employment until the time at which the Medical Director has indicated that continuation of her work would endanger her health or safety, and provided she continues capable of performing her work assignment.

A request for leave of absence for maternity will be accepted by the Long Lines Department Benefit Committee when submitted in writing, via organizational channels, by the pregnant employee. Such leaves may be requested for periods up to one year.

After termination of pregnancy, before the employee returns to work, she should have medical concurrence in the resumption of active employment.

PROCEDURES — MATERNITY

1. Upon realization of her pregnancy the employee should request from her supervisor, Form U574 and a postage-paid envelope pre-addressed to the appropriate Area Medical Director. (Page 893)

2. The supervisor should complete line 1 through 4 of Form U574 and furnish the form and envelope to the employee.

3. The employee should complete lines 5 through 7 and give the form and envelope to her attending physician.

4. The attending physician is requested to complete lines 8 through 11 and forward the form to the Area Medical Director using postage-paid pre-addressed envelope.

5. The Medical Director will review the form and advise the supervisor (and the employee) by means of LM86 (Page 896) in duplicate, of his medical opinion as to how long it appears satisfactory, from the standpoint of her health and safety, for her to remain in active employment.

6. The employee should not remain in active employment beyond the date recommended without further review and concurrence of the Medical Director.

7. At a time reasonably in advance (at least 60 days) of the date when her termination of active employment appears desirable, the employee should obtain or be provided with Form U271, Application for Leave of Absence, if she desires to request a leave. See page 897.

8. At such time as the employee desires to return to work, if she does not have her own physician's written approval for review and concurrence by a Company Medical Director, the approval of the Medical Director in her resumption of active employment should be obtained.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

RETENTION CODE 10R-02000

895
U574
6-71

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
LONG LINES DEPARTMENT

(Lines 1-4 to be completed by Supvr.)

1. Name of employee: _____ S.S. No. _____
2. Nature of work: (Brief description of duties) _____
3. Name of Supervisor: _____ Tel. No. _____
4. Location: _____

(Lines 5-7 to be completed by Employee)

5. To Doctor: _____ Tel. No. _____
6. Address: _____

You are hereby authorized to furnish all necessary information to the Company's Medical Director regarding my pregnancy.

7. Employee's Signature: _____ Date: _____

(For use of Attending Physician)

The information requested on this form will be treated in a confidential manner. It is required to assure the health and safety of this employee if she desires to continue employment while pregnant, and to provide a basis for the health supervision of the employee on the job. It is understood that any fee associated with your report is at the expense of your patient.

8. Anticipated Date of Delivery: _____
9. Has this employee explained her job duties to you? _____
10. To what date do you feel it safe for this employee to continue her present job duties? _____
11. Remarks: _____

PLEASE MAIL PROMPTLY

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

A.T.&T. CO.
L.L. DEPT.

FORM LM86A
6-71

RETENTION CODE
10P-0200

MEDICAL REPORT TO DEPARTMENT – MATERNITY

Date_____

To: _____

_____

1. Name of Employee _____ SS# _____
2. A Physician's Certificate dated _____ regarding pregnancy has been received and reviewed.
3. Anticipated date of delivery _____
4. Employee is able to work until: _____
5. Following work restrictions are recommended _____

_____

_____ for a period of _____

A.T.&T. CO.
L.L. DEPT.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

RETENTION CODE 10R-000KK

FORM U271A 2-72

APPLICATION FOR LEAVE OF ABSENCE

S.S. No. _____

Name _____ Title _____ Date of Birth _____

Department _____ Payroll Code _____ City _____ State _____

Period of Leave or Extension: From _____ To _____ (Inclusive dates)
(Note - Dates should agree with those on PCR)

Reason _____

_____

Address During Absence _____

I hereby request a leave of absence as described above and I have read and fully understand the statements appearing on the reverse side of this Form.

_____
Signature of Applicant
(except for disability)

Date _____

(This space for use of employee)

Secretary, Long Lines Department Benefit Committee
32 Avenue of the Americas, New York, New York 10013

I recommend approval of the leave of absence requested by:

Name _____

Net Credited Service Date _____ Term of Service _____ Yrs. _____ Mos. _____

Last Date to be paid either salary or benefits: _____

(Signed) _____ (Title) _____ (Date) _____

Concurred: _____ (Title) _____ (Date) _____

Concurred: _____ (Title) _____ (Date) _____

Concurred: _____ (Title) _____ (Date) _____

(For use of Benefit Secretary)

A leave of absence was approved by the Benefit Committee on _____ subject to the following conditions:

Date _____

Secretary,
Long Lines Department Benefit Committee.

BENEFIT OFFICE COPY

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

FORM U187 10-68

LONG LINES

New York, June 9, 1971

OUR FILE
IN REPLY TO
YOUR FILE

Mr. [redacted] D. Howatt, Vice President, New York
Mr. C. R. Deyo, Vice President, New York
Mr. B. H. Oliver Jr., Vice President, Washington, D.C.
Mr. J. H. Roff Jr., Vice President & General Attorney, New York
Mr. W. B. Kelley, Vice President, New York
Mr. C. C. Duncan, Vice President, New York
Mr. S. J. Huse, Vice President, New York
Mr. R. E. Sageman, Vice President, New York
Mr. J. R. Rae, Vice President, New York
Mr. R. B. Nichols, Vice President, New York
Mr. J. C. Barclay, Vice President, New York
Mr. R. B. Stecker, Vice President & General Manager, White Plains
Mr. S. R. Willcoxon, Vice President & General Manager, Washington, DC
Mr. J. A. Myers, Vice President & General Manager, Atlanta
Mr. R. D. Watson, Vice President & General Manager, Chicago
Mr. R. H. Gaynor, Vice President & General Manager, Kansas City
Mr. R. E. Huber, Vice President & General Manager, San Francisco

Attached is a statement of Long Lines Policy with respect to Maternity. You will note that the policy requires close coordination with the Medical Director's organization. Also attached is a copy of a procedure and a preliminary issue of related forms to be utilized in connection with Maternity cases.

The revised forms are in process of being standardized and placed in supplies. The policy and procedures will be incorporated in some form of standard instruction, possibly in the "Supervisors Guide - Long Lines Benefits." In the meantime, however, it is desired that the policy and procedures be placed in effect throughout Long Lines.

The material provided with the Medical Director's letter of September 5, 1967 should no longer be used and should be deleted from your practices.

E. S. Craft

Attachments

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

Long Lines Policy - Maternity

A pregnant employee may remain in active employment until the time at which the Medical Director has indicated that continuation of her work would endanger her health or safety, and provided she continues capable of performing her work assignment.

A request for leave of absence for maternity will be accepted by the Long Lines Department Benefit Committee when submitted in writing, via organizational channels, by the pregnant employee. Such leaves may be requested for periods up to one year.

After termination of pregnancy, before the employee returns to work, she should have medical concurrence in the resumption of active employment.

EXHIBIT 1-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

Procedures - Maternity

1. Upon realization of her pregnancy the employee should request from her supervisor, Form U574 and a postage-paid envelope pre-addressed to the appropriate Area Medical Director.

2. The supervisor should complete lines 1 through 4 of Form U574 and furnish the form and envelope to the employee.

3. The employee should complete lines 5 through 7 and give the form and envelope to her attending physician.

4. The attending physician is requested to complete lines 8 through 11 and forward the form to the Area Medical Director using the postage-paid pre-addressed envelope.

5. The Medical Director will review the form and advise the supervisor (and the employee) by means of LM86 in duplicate, of his medical opinion as to how long it appears satisfactory, from the standpoint of her health and safety, for her to remain in active employment.

6. The employee should not remain in active employment beyond the date recommended without further review and concurrence of the Medical Director.

7. At a time reasonably in advance (at least 60 days) of the date when her termination of active employment appears desirable, the employee should obtain or be provided with Form U271, Application for Leave of Absence, if she desires to request a leave.

8. The employee should fill out the upper third of Form U271 and submit it to her supervisor.

9. The supervisor should fill out the middle third of the form and submit it via organizational channels for adequate concurrence, to the Secretary, Long Lines Department Benefit Committee.

10. The Secretary will submit the request to the Committee and upon its action will return two copies of Form U271, suitably endorsed, to the department. One of these two copies should be given to the applying employee.

11. At such time as the employee desires to return to work, if she does not have her own physician's written approval for review and concurrence by a Company Medical Director, the approval of the Medical Director in her resumption of active employment should be obtained.

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts from Contract between American Telephone and Telegraph Company, Long Lines Department and Communications Workers of America - July 18, 1971)

* * *

10.21 Except as otherwise specified in Paragraph 10.22, an employee with six or more months of continuous service since the date of his or her most recent Bell System engagement shall be eligible to an annual vacation with pay determined in accordance with the following:

(1) If engaged prior to April 1 of the current calendar year and after 6 months' net credited Bell System service or if engaged at any time after January 1, 1973 and after 6 months' net credited Bell System service - 1 week.

(2) If engaged prior to October 1 of the proceeding calendar year and after 1 year's net credited Bell System service or if engaged at any time after January 1, 1973 and after 1 years' net credited Bell System service - 2 weeks, provided that if an employee's term of employment of both 6 months and 12 months after January 1, 1973, is completed within the same calendar year, the employee's second week of vacation shall be taken after completion of 12 months' service.

(3) Beginning January 1, 1973 - 2 weeks during the calendar year beginning with the year in which a term of employment of 2 years will be completed.

(4) After 10 years of net credited Bell System service determined as of December 31 of the current calendar year - 3 weeks.

(5) Beginning January 1, 1973, after 17 years of net credited Bell System service determined as of December 31 of the current calendar year - 4 weeks.

(6) After 20 years of net credited Bell System service determined as of December 31 of the current calendar year - 4 weeks.

EXHIBIT 1-C ANNEXED TO DEFENDANT'S
ANSWERS TO INTERROGATORIES

(7) After 25 years of net credited Bell System service determined as of December 31 of the current calendar year - 5 weeks, provided that one week be taken during the months of January, February, March, April, November or December.

10.22 Except as otherwise provided in the case of leaves for Union activities and military leaves, an employee who has been absent on account of disability or on a leave of absence shall be eligible to a vacation provided the employee has worked six months or more after July 1st of the year preceding the current calendar year. If the period between the date of the employee's return and the end of the calendar year is shorter than the length of the vacation to which the employee is entitled, the length of his or her vacation shall be limited to such remaining period.

* * *

12.11 Whenever drastic effects of economic conditions are considered by the Company to warrant part-timing or laying off regular employees, such force adjustments as it may deem necessary shall be made effective among regular employees performing essentially the same type of work in any Department of the Company, or in any subdivision thereof through part-timing or lay-offs or both, subject to the following conditions:

(1) Temporary and occasional employees shall be laid off first, provided, however, that such temporary or occasional employees may be retained or employed temporarily to meet peak load situations or to provide required temporary assistance to outside maintenance or construction forces.

(2) Next in order, employees, with less than two years of net credited Bell System service shall be laid off, in the inverse order of seniority.

(3) In the event that further force adjustments are deemed by the Company to be necessary, the Union shall be advised by the Company as to its proposed plan for accomplishing such further force adjust-

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

ments forty-five days before said plan is to become effective. During said period of forty-five days, the Union may advise the Company in writing as to any reallocation between part-timing and lay-offs which it may prefer in lieu thereof which will accomplish such force adjustments, in which case the Company agrees to adopt the reallocation so proposed by the Union. If no such advice is received by the Company from the Union within said forty-five days, the Company will proceed with such force adjustments as proposed.

(4) Whenever such force adjustments are accomplished by part-timing, there shall be a uniform reduction in the normal workweek not to exceed on the average one day per week among employees performing essentially the same type of work in the particular Department of the Company or subdivision thereof in which it is applied.

(5) Whenever such further force adjustments are accomplished by lay-offs, such lay-offs shall be in the inverse order of seniority among employees performing essentially the same type of work in the particular Department of the Company or subdivision thereof in which it is applied. However, the Company in its discretion, may retain in each service year in each department, despite lesser seniority, the percentage of employees shown in the table below, such percentage to be applied to the number laid off in said service year.

	DEPARTMENT	
Service Year	Operations (Plant), Marketing (Sales), Accounts & Finance Engineering & Personnel	Operations (Traffic) Executive, Legal Public Relations

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

2 but less than 10	5%, or one employee whichever is larger	3%, or one employee whichever is larger
10 and over	0	0

In any determination of the subdivision by the Company under this paragraph, the smallest subdivision shall be as follows:

Department	Subdivision
Accounts and Finance, and Marketing (Sales)	- Division
Engineering	- Area
Legal	- City
Public Relations, Personnel and Executive	- Department
General Service-Other than Dining Service	- Department
General Service-Dining Service	- City
Operations (Traffic)	- District, or City if larger
Operations (Plant)-Other than Gangs	- District
Gangs	- Area

However, when an Operations (Plant) Department employee with two or more years of net credited Bell System service is notified by the Company that he or she is to be laid off in any District, that employee shall have the right to select from another District within the same Division in which the employee is located a job of essentially the same type of work which the employee is qualified to fill, provided the employee currently filling the selected job (a) is not one of the employees re-

tained in accordance with the provisions of the retention clause above, and (b) has the least seniority among all the employees performing essentially the same type of work within the Division. If the foregoing conditions are met, the employee scheduled for lay-off may take the job so selected provided that all transfer expense shall be borne by the employee.

* * *

15.60 Absence for Union Activity

To the extent that service and coverage requirements permit, an employee who is an authorized representative of the Union shall, with reasonable notice and upon request of the Union, be excused without pay or granted leaves of absence without pay to conduct Union Activities subject to the following:

15.61 Excused Absences (Those not exceeding 30 continuous calendar days)

(1) Requests for absence shall be made by the employee to the employee's immediate supervisor before 3:00 P.M. Thursday of the week preceding the day the absence is to start. The request shall specify the date the absence is to start and the period the employee expects to be absent.

(2) A single period of absence shall not exceed 30 continuous calendar days.

(3) Excused absences up to the equivalent of 60 scheduled working days, including time spent in meeting with Company representatives, may be granted an employee in each calendar year period.

(4) Excused absences in excess of the equivalent of 60 scheduled working days in each calendar year period may be granted an employee but such excused absences shall be deducted from the period allowed to an employee for leaves of absence as specified in Paragraph 15.62(3).

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(5) Meeting with Company representatives shall not be considered as breaking a continuous period of absence.

(6) Pay Treatment - Payment for an excused absence shall not be made except for time within the employee's scheduled normal tour when meeting with Company representatives in joint meetings.

(7) To the extent that service and coverage conditions permit, an authorized Union represenative will be granted an excused absence for Union emergencies provided that the request for absence be made by the employee to his or her immediate supervisor 48 hours before the absence is to start. This arrangement may be terminated at any time as to any employee by the Company giving the Union seven (7) days' notice of its intention to do so.

15.62 Leaves of Absence

(1) When Required - A leave of absence shall be required if a single period of absence is to exceed 30 continuous calendar days. The leave shall cover the entire period of absence including any excused absence under Paragraph 15.61 which is continuous with the leave of absence.

(2) Application - A leave of absence shall be applied for by the employee in writing at least 10 days prior to its effective date, and the application shall contain approval in writing by a duly authorized representative of the Union. The Company shall advise the employee of the disposition of the request.

(3) Duration

(a) The total period allowed for leaves of absence in (b) below shall be reduced by the deduction of the number of days of excused absence in excess of the equivalent of 60 scheduled working days in each calendar year period.

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(b) Leaves with Service Credit - The initial period of such leaves of absence shall not exceed one year. Additional leaves for periods not to exceed one year shall be granted but the total period of all leaves with service credit granted to any employee during his or her entire service with the Company subsequent to June 2, 1948, shall not exceed four years.

For such leaves of absence with service credit, an employee shall,

(A) Receive full service credit for all purposes except wage progression.

(B) Be eligible to Death Benefits.

(C) Be eligible to Sickness Benefits beginning the eighth calendar day following the termination of the leave.

(c) Leaves of absence granted prior to either party's written notice of its election to reopen this Contract or to terminate this Contract and for the purpose of negotiation on the provisions of a wage reopening or of a new Contract, as provided for in Article 20 of this Contract, shall not be considered in computing the total period allowed for leaves of absence as provided for in (b) above, provided, however, that such leaves of absence shall not exceed 60 days per negotiation period unless otherwise agreed to by the parties hereto.

(d) Leaves Without Service Credit - Subsequent to the expiration of leaves of absence with service credit as provided for in (b) above, leaves without service credit shall be granted as follows:

The total period of all leaves without service credit granted to any employee during his or her entire service with the Company subsequent to June 2, 1948, shall

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

not exceed two years.

Leaves without service credit shall provide protection only against a break in the continuity of service of the individual involved and the time covered by such leaves shall be deducted in computing the individual's term of employment.

(4) Wages and Wage Rates While on Leave

(a) No change in an employee's basic wage rate shall be made during the period of the leave of absence.

(b) An employee on leave of absence shall not receive pay from the Company even though he spends time in meeting with Company representatives.

(5) Termination of Leave - After receipt of reasonable notice from the employee to the Company that he or she desires to terminate his or her leave prior to the specified termination date, the leave shall be terminated upon assignment of the employee by the Company to regular duties.

(6) Position Upon Return from Leave

(a) An employee shall be reinstated in his or her former position or an equivalent position if the employee is physically qualified to perform such work and is eligible for the position.

(b) If an employee is not reinstated in accordance with (a) above, the employee shall be entitled to such treatment as an employee with his or her net credited Bell System service would have received.

EXHIBIT 1-C ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(7) Wage Rate Upon Return from Leave

(a) If an employee is assigned by the Company to his or her former position or an equivalent position, the employee shall receive his or her basic wage rate in effect at the start of the leave, adjusted for any change in wage level made during the period of absence.

(b) If an employee is assigned by the Company to a position other than the employee's former position or an equivalent position, the employee shall receive a basic wage rate appropriate to the new assignment.

15.63 General

(1) Holidays

(a) Holidays occurring within the period of an excused absence or leave of absence are part of the absence.

(b) Holidays occurring at the beginning or end of an excused absence or a leave of absence are part of the absence if the employee is not available for work.

(2) Vacations - An employee absent for Union duties, either on excused absence or leaves of absence, to such an extent that the Company pays less than 50% of the employee's basic wage for any calendar year shall not be entitled to a vacation at Company expense for that year.

* * *

18.10 Plan for Employees' Pensions, Disability Benefits and Death Benefits

EXHIBIT 1-C ANNEXED TO DEFENDANT'S
ANSWERS TO INTERROGATORIES

18.11 Except as provided in this Section and in Section 20.10 there shall be no negotiations during the life of this Contract upon changes in pensions or any other subject covered by the existing "Plan for Employees' Pensions, Disability Benefits and Death Benefits."

18.12 In the event, during the life of this Contract, the Company proposes to exercise the right provided in Section 10 of the existing "Plan for Employees' Pensions, Disability Benefits and Death Benefits," by action affecting the benefits or privileges of employees represented by the Union, it will before doing so notify the Union of its proposal and afford the Union a period of sixty (60) calendar days for bargaining on said proposal; provided, however, that no change may be made in the Plan which would reduce or diminish the benefits or privileges provided thereunder as they apply to employees represented by the Union without its consent.

18.13 Any dispute involving the true intent and meaning of Paragraph 18.12 of this Section may be presented as a grievance and if not resolved by the parties under the grievance machinery may be submitted to the arbitration procedure of this Contract. However, nothing herein shall be construed to subject the Plan or its administration or the terms of a proposed change in the Plan to arbitration.

18.21 Promotion

The Company in selecting employees for promotion from a title classification to a higher title classification, both within the bargaining unit, shall adhere to the principle that seniority shall govern if all other qualifications of the individuals being considered are determined by the Company to be substantially equal. The decision of the Company on the latter question shall be controlling unless the Company is shown to have acted arbitratily or in bad faith. Any dispute concerning the interpretation or application of this clause may be taken up as a grievance and if necessary submitted to arbitration in accordance with Article 17.

* * *

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts from Plan for Employees' Pensions, Disability Benefits and Death Benefits)

* * *

Plan for Employees' Pensions, Disability Benefits and Death Benefits

Effective January 1, 1913, with Amendments to and including the Amendment Effective October 1, 1971

SECTION 1. Undertaking

The American Telephone and Telegraph Company undertakes in accordance with these Regulations, to provide for the payment of definite amounts to its employees when they are disabled by accident or sickness or when they are retired from service, or, in the event of death, to their dependent relatives, or, in certain cases, to their annuitants.

SECTION 2. Definitions

1. In these Regulations the word "Plan" shall mean the Plan for Employees' Pensions, Disability Benefits and Death Benefits, as set forth in these Regulations.

2. The word "Company" shall mean the American Telephone and Telegraph Company, a New York corporation, or its successors.

3. The words "Chairman of the Board," "President" and "Board of Directors" or "Board" shall mean the Chairman of the Board of Directors, President and Board of Directors respectively of the Company.

4. The word "Committee" shall mean the persons appointed by the Board to administer the Plan.

5. The word "Employees" shall mean those persons who receive a regular and stated compensation from the Company other than a pension or retainer.

6. The expression "term of employment" shall mean period of continuous employment in the service of the Company, or of the Company and one or more Associated or Allied Companies with which agreements have been or shall be made for interchange of benefit obligations as provided in Section 9 of these

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

Regulations, or in the service of any Bell Company predecessor of any of the above Companies. Service in companies subsidiary to, allied with or predecessors of an Associated or Allied Company will be considered, in determining "term of employment," as service in the Associated or Allied Company, in all cases authorized by appropriate action on the part of the Associated or Allied Company and approved by the Committee of the American Telephone and Telegraph Company.

SECTION 3. **Committee**

1. There shall be a Committee of five (5) appointed by the Board to serve during its pleasure, which Committee shall be called the Employees' Benefit Commi e. This Committee shall be charged with the administration of the Plan.

2. The Committee shall have the specific powers elsewhere herein granted to it and shall have such other powers as may be necessary in order to enable it to administer the Plan.

3. It shall determine conclusively for all parties all questions arising in the administration of the Plan.

4. It shall be empowered to authorize disbursements according to these Regulations.

5. It shall adopt such By-Laws and rules of procedure as it may find necessary, subject to the approval of the Chairman of the Board or, at any time when there is no Chairman of the Board, the President.

6. It shall be empowered to employ a Secretary and such other assistants as may be required in the administration of the Plan.

7. The expenses of the Committee in administering the Plan shall be borne by the Company.

SECTION 4. **Pensions**

1. a. Effective October 1, 1971, all employees who have reached the age of fifty-five years and whose term of employment has been twenty or more years, all employees who have reached the age of sixty-five years and whose term of employment has been fifteen or more years, all employees who have reached the age of fifty years and whose term of employment has been twenty-five or more years and all employees regardless of age whose term of employment has been thirty or more years shall if they so request, or may at the discretion of the Committee, be retired from active service and, upon such retirement, shall be granted service pensions.

* * *

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

2. Effective October 1, 1971, the annual pension allowance for each employee retired with a pension on account of age, length of service or disability under the provisions of Paragraph 1(a) or 1(c) of this Section shall be as follows:

For each year of his term of employment including the month in which his 55th birthday occurs, one per centum (1%) and for each year of his term of employment after the month in which his 55th birthday occurs, one and one-half per centum (1.5%), of the average annual pay during the five consecutive years of service during which the retired employee was paid the highest rate of wages subject to the following conditions:

* * *

The annual pension allowance for each person eligible to a deferred service pension under the provisions of Paragraph 1(b) of this Section shall be as follows:

For each year of his term of employment, one per centum (1%), and if such person is in the service of the Company on or after October 1, 1971, for each year of his term of employment after the month in which his fifty-fifth birthday occurs, an additional one-half per centum (0.5%), of his average annual pay during the five consecutive years during which the former employee was paid the highest rate of wages and the minimum pension provisions of this Plan shall not apply.

* * *

SECTION 6. Sickness Disability Benefits

1. All employees of the Company shall, after a term of employment of six months, be qualified to receive payments under these Regulations on account of physical disability to work by reason of sickness. Such payments are hereinafter referred to as Sickness Disability Benefits. Such payments shall terminate when disability ceases and shall in no case extend beyond the periods hereinafter mentioned. For the purposes of these Regulations,

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

sickness shall include injury other than accidental injury arising out of and in the course of employment by the Company.

2. Beginning June 1, 1969, the sickness disability benefits in sickness disability cases originating on and after said date shall be as follows:

a. If term of employment has been 6 months to 2 years—
half pay 52 weeks.

b. If term of employment has been 2 to 5 years—
full pay 4 weeks; half pay 48 weeks.

c. If term of employment has been 5 to 15 years—
full pay 13 weeks; half pay 39 weeks.

d. If term of employment has been 15 to 20 years—
full pay 26 weeks; half pay 26 weeks.

e. If term of employment has been 20 to 25 years—
full pay 39 weeks; half pay 13 weeks.

f. If term of employment has been 25 years or more—
full pay 52 weeks.

In sickness disability cases originating before June 1, 1969 for which sickness disability benefits were being paid on that date eligibility to benefits shall continue in accordance with the above table up to a maximum of 52 weeks from the date sickness benefits began.

"Full pay" and "half pay" for the purposes of this paragraph shall be based on the number of hours per week constituting the employee's normal service under his contract of hiring, not including overtime, and shall be computed at the employee's rate of pay at the time the disability began, provided, however, that the benefits shall at no time exceed the pay which the employee would receive, based on his rate of pay and the general schedule of hours per week constituting a full week's service at the time the disability began.

3. Sickness disability benefits shall begin on the eighth calen-

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

dar day of absence on account of disability, provided, however, that if an employee has received sickness disability benefits for any period and is again absent on account of sickness within two weeks after the termination of such period, any benefits on account of such further sickness shall begin on the first day of absence instead of on the eighth day.

4. Successive periods of sickness disability shall be counted together as one period in computing the period during which the employee shall be entitled to benefits, except that any sickness occurring after an employee has been continuously engaged in the performance of duty for thirteen weeks shall be considered as a new sickness and not as part of any disability which preceded such period of thirteen weeks.

5. Employees shall not be entitled to receive sickness disability benefits for time for which any wages are paid them by the Company.

6. All Sickness Disability Benefits shall be a charge to the operating expense accounts of the Company when and as paid.

* * *

Section 8. General Provisions * * *

4. Any absence from the service without pay, other than absence during a period of disability benefits, or leave of absence or temporary lay-off as defined in Paragraphs 5 and 6 of this Section, shall be considered as a break in the continuity of service unless the Board of Directors specifically authorizes the Committee to consider such absence as a leave of absence, and if any person is reemployed after such a break in the continuity of his service, his term of employment shall be reckoned from the date of such reemployment.

* * *

EXHIBIT 1-D ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

5. * * * A leave of absence for a period not exceeding one month, except a leave following expiration of disability benefits, may be granted in accordance with the rules of the Company, without approval by the Committee, and the period of absence shall be credited in computing term of employment, and the employee shall retain eligibility to benefits during the absence. Leave of absence for any period in excess of one month shall not be effective unless approved in writing by the Committee, and in any case in which such approval is given, the Committee shall indicate whether or not the period of absence is to be deducted in computing term of employment and whether during the absence the employee shall be eligible to benefits under these Regulations. Absence following the expiration of a period of disability benefits shall be considered as a break in the continuity of service unless the employee is granted a leave of absence by the Committee, provided, however, that in its discretion, the Committee may consider any such absence as a leave of absence, if satisfactory evidence is furnished that the disability was continuous during the entire period of absence.

* * *

7. Every employee who shall be absent from duty on account of sickness or injury must at once notify his immediate supervisor, and the employee shall not be entitled to benefits for time previous to such notice, unless delay shall be shown to have been unavoidable and satisfactory evidence of disability is furnished.

8. All claims for disability benefits, to be valid, must be made within sixty days from the date of accident or from the first day of absence on account of sickness.

* * *

EXHIBIT 2-A ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts from Basic Medical Expense Plan)

* * *

Highlights of your Basic Medical Expense Plan Coverage

120 Days of Care During Each Hospital Confinement

Including - hospital room and board, general nursing care, and a broad range of hospital services

Doctor's services (including assistant surgeon) for surgical care and treatment of fractures and dislocations

Doctor's services for medical care in the hospital - including consultation

General anesthesia - administration and supplies in connection with surgical or maternity care

X-ray and radiation therapy

Electro-shock therapy

Diagnostic X-ray and laboratory examinations

Maternity care

Use of the out-patient facilities of any hospital

Index on pages 19 and 20.

* * *

Maternity Care

For care of any conditions arising from pregnancy, including childbirth, miscarriage or abortion, hospital benefits consist of covered-in-full hospital services for up to 120 days

EXHIBIT 2-A ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

during any one pregnancy.

Benefits are available for doctor's services in connection with maternity care, at 80% of the Customary and Reasonable Fee.

* * *

Limitations and Exclusions

To assure proper use of Plan benefits, certain limitations and exclusions are necessary. For example, no benefits are provided under the Basic Medical Expense Plan for: * * *

In connection with pregnancy, doctor's services for diagnostic laboratory and X-ray examinations.

* * *

EXHIBIT 2-B ANNEXED TO DEFENDANT'S ANSWERS TO INTERROGATORIES

(Excerpts from Extraordinary Medical Expense Plan)

* * *

Section 6. Exceptions

The following shall in no event be considered Covered Medical Expenses: * * *

L. Charges for any services rendered for pregnancy or for resulting childbirth, miscarriage or Caesarean section or for prenatal or postnatal care, except that in the case of severe medical or surgical complications, any additional expenses for services rendered on account of such complications shall not be excluded if they otherwise qualify as Covered Medical Expenses;

* * *

SUPPLEMENTAL ANSWERS TO PLAINTIFFS' FIRST INTERROGATORIES

(Excerpts: Numbers 1, 3 and 16)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

* * *

Interrogatory No. 1. The most responsive information available from Long Lines' records is as follows:

Date	Acctg.	Eng.	Mktg.	Plant	Traffic	Other	Total
12-31-65	1297	1035	714	898	5284	1466	10,694
12-31-66	1386	1210	776	927	4752	1646	10,697
12-31-67	1457	1574	758	985	3888	1431	10,093
12-31-68	1560	1571	788	1006	3708	1452	10,175
12-31-69	1563	1602	882	1154	3814	1468	10,483
12-31-70	1659	1637	1056	1346	4203	1535	11,436
12-31-71	1536	1424	1007	1471	2534	1588	9,560
12-31-72	1427	1334	1118	1872	2911	1464	10,126

Interrogatory No. 3. Long Lines is not aware of any instance since July 2, 1965, where an employee has been terminated for being pregnant. Both before and after that date, Long Lines

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* For the convenience of the Court the Interrogatories of Plaintiffs, and Defendant's Answers and Supplemental Answers have been included together herein, despite the fact that Defendant's Answers and Supplemental Answers were not necessarily filed in chronological order.

has extended to pregnant employees the option to resign or to take maternity leave. Until September, 1967, employees were required to exercise this option at or before the end of the first six months of pregnancy. From September, 1967 to June, 1971, the period was extended through the end of the seventh month of pregnancy. During the years 1965-71, employees on maternity leave were not assured of re-employment at the same job or job level. In June, 1971, Long Lines' policy was revised as indicated in Exhibits 1-A and 1-B submitted in answer to Interrogatory 6.

* * *

Interrogatory No. 16. Long Lines operates on a nationwide basis. Many of its local offices are small, and located in remote areas, with necessarily limited flexibility in personnel openings. It is possible that only lower-paying jobs were available for some employees returning from maternity leave during the period from July 2, 1965, through October 15, 1971. Long Lines will make available to plaintiffs records which would contain the specific information as to individuals requested for that period in the event that the Court certifies this case as a class action encompassing claims arising during such period.

* * *

PLAINTIFFS' SECOND INTERROGATORIES

(Excerpts: Numbers 4, 11, 14, 18, 31, 32, 33, 35, 38, 40, 42, 44, 52, 54, 55, 56, 57, 62, 65 and 73)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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* * *

4. State whether Long Lines applies, implements or imposes any additional conditions or special requirements for hire, promotion, transfer or other job change within the Company when a female applicant, employee or former employee is pregnant. If the answer is in the affirmative, please state: * * *

(c) Attach hereto copies of all documents which indicate procedures employed by Long Lines in granting or denying employment, promotions, transfers or any other job change within the Company wherein the inquiry into or consideration or pregnancy or pregnancy-related factors is explained or otherwise set forth.

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* For the convenience of the Court the Interrogatories of Plaintiffs, and Defendant's Answers and Supplemental Answers have been included together herein, despite the fact that Defendant's Answers and Supplemental Answers were not necessarily filed in chronological order.

PLAINTIFFS' SECOND INTERROGATORIES

11. State what procedures Long Lines utilizes in attempting to re-employ employees after absence due to maternity or pregnancy-related factors. In connection with such procedures, state: * * *

(b) What process, if any, does Long Lines employ to ensure that a former employee seeking re-employment after leave for maternity or pregnancy-related reasons can return to her previous position and salary. If such an effort is made, state whether it differs in any respect from Long Lines' efforts to find re-employment positions of similar type and pay for all other employees returning from leaves of absence. * * *

* * *

14. Identify any studies, surveys orcomparisons possessed by Long Lines or of which it is aware, which are now in existence or in the process of being completed, which consider sickness benefits for maternity or related benefits, (including cost factors of implementing same) provided by Defendant, the Bell System, or any other United States industry, company,

union or other employer. Attach hereto a copy of each such study, survey or comparison which is in written form.

* * *

18. Would Defendant's response to Interrogatory 17, supra, be different in the case of a pregnant employee who is on maternity leave as compared to a pregnant employee who is still at her job? If the answer is in the affirmative, specify such differences and attach all governing documents, rules or regulations and all explanatory materials distributed to employees or supervisory personnel.

* * *

31. In reference to Defendant's Exhibit 1-B submitted in response to Plaintiffs' First Interrogatories, please state the following for the years 1965 to the present: * * *

(c) * * *

(3) Whether the "Medical Director" may find that a pregnant employee must terminate her employment at an earlier date than that suggested by her doctor. If the answer is in the affirmative, state: * * *

(iii) Whether any appeal or review procedure is available to a pregnant employee who challenges such a determination by the

Medical Director.

(4) Whether pregnant employees who seek further review and concurrence of the Medical Director to continue working past the date recommended by their physician are examined by the Medical Director.

In this connection, please state: * * *

(iv) Whether any appeal or review procedure is available to a pregnant employee who challenges such a denial by the Medical Director.

* * *

32. State whether any appeal or review procedure is available to an employee who is denied sickness benefits during a Leave of Absence by the "Committee." If the answer is in the affirmative, please state:

(a) The procedure governing such appeal or review. Attach all documents which would reflect such procedures, including the body or persons to whom such appeal is made and the factors governing their action. * * *

PLAINTIFFS' SECOND INTERROGATORIES

33. In reference to Defendant's Exhibit 1-B submitted in response to Plaintiffs' First Interrogatories (letter dated June 9, 1971 regarding maternity policies), please state the following:

(a) The circumstances surrounding the adoption of the policy entitled "Long Lines Policy-Maternity."

(b) The previous policies and procedures in effect prior to June 9, 1971 and the manner in which this document reflects a substantive change. * * *

(d) * * *

(iii) Attach a copy of the document referred to as "the Medical Director's Letter of September 5, 1967."

* * *

35. How many Long Lines' employees between July 2, 1965 and the present have received sick benefits during a Leave of Absence. * * *

* * *

PLAINTIFFS' SECOND INTERROGATORIES

38. State for each year from 1965 to the present whether or not an employee's entitlement to vacations is affected by the granting of a leave of absence. If the answer is in the affirmative, please state:

(a) The manner in which vacation entitlement has been or is so affected.

(b) Attach all governing documents which would set forth such effect and all explanatory materials distributed to employees or supervisory personnel.

* * *

40. State for each year from 1965 to the present whether or not an employee's entitlement to a pension is affected by the granting or denial of a leave of absence. If the answer is in the affirmative, please state:

(a) The manner in which pension entitlement is so affected. * * *

* * *

42. State whether service credit has been granted to any employees during the years 1965 to the present who have

taken a Leave of Absence beyond one month. * * *

* * *

44. Does a pregnant employee have the option to claim sickness disability status in lieu of maternity leave?

* * *

52. State whether any officers, supervisory employees, members of Committees or other personnel of Long Lines have ever given testimony or issued any statement or presented any written remarks before any governmental agency, congressional committee or in any public forum concerning the Company's policies with regard to maternity benefits, leaves of absence or sickness benefits, or any issue dealing with questions of equal employment opportunity for women since July 2, 1965. Attach hereto copies of all such testimony, statements or written remarks, including a notation of the author or issuer of each document, their title, the date and the body or agency to whom each was given or presented.

* * *

54. Do employees of Long Lines returning from a Leave of Absence who become ill at the end of a scheduled leave automatically become eligible for sick benefits? * * *

PLAINTIFFS' SECOND INTERROGATORIES

55. State whether Long Lines' employees on Leaves of Absence receive wage progression credit and indicate, if differences exist, the categories of leave for which such credit is given or denied.

56. State whether any differences exist between entitlement to wage progression credit of employees absent for maternity or pregnancy-related reasons and employees absent for other types of reasons.

57. Have any meetings or conferences been held between or among officers, directors, supervisory employees or other personnel of Long Lines and/or between or among similar personnel in other Bell System companies where the subject of maternity leaves and related benefits or sickness benefits or issues of equal employment opportunities for women have been discussed since July 2, 1965? Attach copies of all minutes, correspondence, statements or other documents concerning the substance of such meetings and decisions or policies arising therefrom, including a notation of the author or issuer of each document and the date issued.

* * *

62. State whether an employee of Long Lines taking

a Leave of Absence for maternity or pregnancy-related reasons receives payment for accumulated sick leave, or may receive such payment upon request.

* * *

65. State whether an employee of Long Lines taking a Leave of Absence for maternity or pregnancy-related reasons receives payment for accumulated vacation time, or may receive such payment upon request.

* * *

73. State whether any efforts are made by supervisory personnel, members of the Benefit Committee, the Medical Director or any other Long Lines personnel to inquire into the financial status of employees requesting or taking a Leave of Absence for maternity or pregnancy-related reasons.

* * *

ANSWERS OF DEFENDANT AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT TO PLAINTIFFS' SECOND INTERROGATORIES

(Excerpts: Numbers 4, 11, 14, 18, 31, 32, 33, 35, 38, 40, 42, 44, 52, 54, 55, 56, 57, 62, 65 and 73 with Exhibits)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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* * *

4. Yes. * * *

(c) See Exhibit B, attached hereto.

* * *

11. * * *

(b) With regard to employees returning from maternity leave, see Exhibit 1-B submitted in answer to Plaintiffs' First Interrogatories and Exhibits B, D-1 and D-2 attached hereto. Reemployment of individuals returning from military and union leave is guaranteed, within the limits speci-

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* For the convenience of the Court the Interrogatories of Plaintiffs, and Defendant's Answers and Supplemental Answers have been included together herein, despite the fact the Defendant's Answers and Supplemental Answers were not necessarily filed in chronological order.

fied by law and contract, respectively. Individuals returning from other personal leaves are reemployed where feasible.

* * *

14. See Exhibits * * * E-6 attached hereto * * *

* * *

18. The same coverage under the Extraordinary Medical Expense Plan and Basic Group Life Insurance Plan, is continued at Defendant's expense for employees on maternity leave. The same coverage under the Basic Medical Expense Plan continues at Defendant's expense for the balance of the first calendar month in which maternity leave commences, and is available thereafter to employees on maternity leave at group rates. See Defendant's Exhibit 2-A, 2-B, 2-C submitted in answer to Plaintiffs' First Interrogatories.

* * *

31. * * *

(c) * * *

(3) * * *

(iii) Further evaluation by the Medical Director, to include consultation with the employee's personal physician, and if disagreement occurs between the personal

physician and the Medical Department doctor, possible consultation with an outside physician. The Medical Director reserves the right to make the final decision.

(4) At the request of the employee, such an examination may be made either by the Medical Director or another physician in the Medical Department. * * *

(iv) No. * * *

32. (a) Sickness benefits are not available to any employee on leave of absence. If Plaintiffs are seeking information as to whether a review procedure is available for an employee who is denied disability benefits, the answer is in the affirmative. Denial of disability benefits by the Long Lines Department Benefit Committee is reviewed by the Employees' Benefit Committee of American Telephone and Telegraph Company. * * *

33. (a) The June 9, 1971, letter was issued following receipt of the letter attached hereto as Exhibit L, in

order to redefine Long Lines' policies.

(b) Previous policies and procedures differed in that pregnant employees commenced leave at or before the end of the seventh month of pregnancy and were not guaranteed re-employment. * * *

(d) * * *

(iii) See Exhibit M attached hereto.

* * *

35. None.

* * *

38. Yes.

(a) Vacation entitlement is based upon term of employment, which time employees on leave cease to accrue after the first 30 days, (or if such leave commences within 13 weeks of a previous leave, after the first day of such leave) except for certain union activities as specified in current collective bargaining agreements and leave for military service for the first four years, as required by the Military Selective Service Act. In addition, see Article 10, Paragraph 10.22 of current collective bargaining with CWA submitted as Exhibit 1-C in

answer to Plaintiffs' First Interrogatories.

(b) See Exhibit 1-B and 1-C submitted in answer to Plaintiffs' First Interrogatories.

* * *

40. (a) Pension entitlement is based upon terms of employment, which time employees on leave cease to accrue beyond the first 30 days, (or is such leave commences within 13 weeks of a previous leave, after the first day of such leave) except for certain union activity under current collective bargaining agreements and leave for military duty as required by the Military Selective Service Act. * * *

* * *

42. (a)-(c) Service credit is granted in such instances only for military leaves of less than four years, pursuant to law, and leaves for certain union activities under current collective bargaining agreements. * * *

* * *

44. An active employee who is disabled by complications of pregnancy or by non-pregnancy related accident or illness has the option to claim sickness disability status in lieu

of maternity leave.

* * *

52. Yes. See Exhibits P-1 and P-2 attached hereto.

* * *

54. The only employees who have not returned to work from a leave of absence who are eligible for sickness benefits are those who have taken military and union leaves within the limits specified by law and contract, respectively. * * *

55. Employees on military leave receive wage progression credit for up to four years. Employees on all other kinds of leave do not receive wage progression credit beyond the first thirty days.

56. See answer to No. 55, supra.

57. Yes. See Exhibit 1-B submitted in answer to Plaintiffs' First Interrogatories, and Exhibits A, B, D-1, M, P-1, P-2, Q-1 and Q-2 attached hereto. * * *

* * *

62. No. Long Lines has never had a policy whereby any employee accumulates "sick leave".

* * *

ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

65. No. Long Lines has never had a policy whereby any employee on leave of absence receives payment in lieu of vacation time. When an employee requests a leave of absence which will extend through the end of the current year, and has not taken the vacation to which she is eligible, the vacation should be taken and the leave of absence started on the first absent scheduled working day following the vacation period. Where it is expected that the employee will return to work prior to the end of that year, she may or may not take the vacation due depending upon the wishes of the employee and departmental practices.

* * *

73. No.

* * *

EXHIBIT B ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

AT&T Long Lines

New York, September 1, 1972

Our File
In Reply To
Your File

Mr. T. W. Carlson, Assistant to Vice Pres. & General Mgr., White Plains
Mr. E. J. McMahon, Manager - Administrative Staff, New York
Mr. J. L. Amwake, Assistant to Vice Pres. & General Mgr., Washington, D.C.
Mr. D. Jasmann, Manager - Administrative Staff, Chicago, Ill.
Mr. D. S. Keeler, Government Service Manager, Washington, D.C.
Mr. C. G. Tuggle, Manager - Administrative Staff, Atlanta, Ga.
Mr. G. D. Patterson, Manager - Administrative Staff, San Francisco
Mr. O. T. Stueck, Manager - Administrative Staff, Kansas City

The Executive Policy Committee at "195" just recently reviewed the subject of pregnancy and childbirth and affirmed the Bell System policy in the areas of (1) employment of pregnant applicants, (2) leaves of absence and (3) reemployment.

The following are excerpts from the policy statement:

I. Employment of Pregnant Applicants

Pregnancy shall not be a disqualifier for employment when minimal or no training is required and when the job presents no hazards to the employee or her unborn child (as recommended by the Company Medical Officer).

Applicant should be able to work a reasonable length of time prior to departure for childbirth.

Applicants for jobs requiring professional training of varying lengths who do not possess readily usable skills should not be hired at that time but shall be encouraged to reapply.

II. Leaves of Absence

Normal pregnancy and childbirth do not constitute sickness under the "Plan for Employees' Pensions, Disability Benefits and Death Benefits". The policy is to grant a maternity leave of absence at a time mutually agreeable with the employee and her physician contingent upon concurrence of the Company Medical Director.

EXHIBIT B ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

The initial period may vary with extensions granted to the leave up to a maximum of 12 months. The leave (and extensions) to be granted with eligibility for one month service credit, death benefit, BME, BME at employee cost and group life insurance.

A pregnant employee, before going on leave, will be eligible to sickness benefits when absent due to sickness disability either unrelated to her pregnancy, such as hypertension or pneumonia, or arising out of it in the form of sickness complications or abnormalities such as toxemia, miscarriage, abortion, etc.

III. Reemployment

Upon application for reemployment, a position of like status and pay shall be provided unless conditions make it impossible and no applicant should be refused without concurrence of the Vice President - Personnel.

NOTE: It is intended that there be a strong commitment to reemploy, that refusal will be very infrequent and only under severe business circumstances.

As you can see this statement involves no change in our present treatment of maternity leaves.

H. W. Leonhardt Jr.

Secretary,
Long Lines Department Benefit Committee.

ES:JE

EXHIBIT D-1 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

December 22, 1971

A statement of Long Lines policy with respect to maternity leaves was distributed on June 9, 1971. That statement addressed itself largely to the initiation of maternity leaves and provided that pregnant employees could remain active until health, safety or job performance factors intervened.

We have recently had several questions about employees returning from maternity leaves. The following statements are intended to clarify Long Lines policy in this regard:

1. Generally, reemployment at the same job level may be expected when the employee is ready to return from maternity leave. Any exception will require the approval of the Vice President-Personnel.

2. Exceptions to the assurance of reemployment at same level are expected to be rare. The termination of a Long Lines activity in a city is an example of an event which could lead to the referral of an exception to the Vice President-Personnel. Routine variations in business activity may dictate force adjustments but in no case should maternity leaves for women be used to achieve such adjustments.

3. Historically, maternity leaves have had an accepted length of twelve months. However, it is becoming increasingly apparent that having a prescribed length for a maternity leave does not always meet the needs of either the company or the employee and that lesser leave periods in many cases are desirable. Accordingly, it is suggested that the length of the maternity leave be worked out with the employee desiring the leave based upon personl and medical needs. The maximum length of either and initial leave or total of extended leaves would remain twelve months.

EXHIBIT D-1 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

The application for Leave of Absence (U271 A-D 6-71) will be amended and reissued to incorporate this clarification among the conditions listed on the reverse of the form.

If your people should have any questions regarding the above, Mr. Culkin is available. Medical questions may be referred to Dr. McCahan.

/S/

E. H. Crabb

TO HEADQUARTERS AND AREA VICE PRESIDENTS

EXHIBIT D-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

(Excerpts from Upgrade and Transfer Plan)

It is the Company's policy to ensure that all employees will be given the opportunity to progress in the business, as opportunities arise, based on their skills and interests.

PLAN OVERVIEW

The Long Lines Non-management Upgrade and Transfer Plan is designed to help you move ahead in the business consistent with your skills and interests as opportunities arise. It is the vehicle that will allow you the opportunity to tell the company about your career hopes and objectives while assuring efficient and objective handling of requests for changes in assignment or work location. You can request consideration for any non-management job in Long Lines. If you qualify and there is an opening you will be considered.

It should be noted that although the Plan doesn't guarantee you'll get a new assignment or a different work location, it does guarantee you will get consideration.

There are certain basic provisions within the Plan to make sure the transfer of people is orderly and consistent with our service and cost obligations:

EXHIBIT D-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

You must be on your current job for a specified period of time before making a transfer request. * * *

* * *

Plan Summary

The Upgrade and Transfer Plan provides all non-management employees the opportunity to file requests for job changes or work in other locations provided they meet these requirements:

Minimum active time on current title

Clerical, Operator, or Service Workers (below TG-5 or equivalent) - six months.

Other Clerical, Outside Plant Title Group 1 or Service Workers - one year.

Craft, Outside Plant Title Group II and III - two years.

Staff and Technical Employees - two years.

* * *

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

2000 L STREET, NORTHWEST

WASHINGTON, D.C. 20036

202 466-5557

LEE SATTERFIELD
EXECUTIVE ASSISTANT AND ATTORNEY

January 28, 1974

Mr. Philip J. Davis
Director
Office of Federal Contract Compliance
U. S. Department of Labor
14th and Constitution Ave., N.W.
Washington, D. C. 20210

Dear Mr. Davis:

In response to your request, I am transmitting the enclosed data relevant to the proposed revisions to the Office of Federal Contract Compliance Sex Discrimination Guidelines, 38 Fed. Reg. 35336-35338 (Dec. 27, 1973), on behalf of the American Telephone and Telegraph Company and the Associated Bell Companies. This data focuses on proposed Section 60-20.3 (h)(2), which provides in part:

> Medically verifiable disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance policies or sick leave plans available in connection with employment ....

This section would reverse the present position of OFCC that, "There is no requirement that an employee be paid during absence[for maternity leave]." Memorandum of John L. Wilks, Director, OFCC, to Agency Heads, November 12, 1970, at 5.

EXHIBIT E-6 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

Without regard to legal arguments against adoption of proposed Section 60-20.3 (h) (2), which undoubtedly will be developed by other interested parties, the attached data statistically demonstrates: (1) the present treatment of men and women under the Companies' sickness and accident disability plan; (2) the cost and impact on the male and female share of disability benefits which would occur if normal pregnancy were treated as a sickness or accident; and (3) the fact that nearly half of those taking maternity leave do not return to work which sharply distinguishes the nature of their absence for employee benefit purposes from accident and sickness absences.

Based on this data, as well as the settled medical opinion that pregnancy is neither a sickness nor accident, we urge that OFCC not adopt proposed Section 60-20.3 (h) (2), but maintain its present position that federal contractors need not provide sickness and accident benefits for pregnancy.

Lee Satterfield
Executive Assistant & Attorney

EXHIBIT E-6 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

BELL SYSTEM DATA RELEVANT TO PROPOSED REVISIONS IN OFCC SEX DISCRIMINATION GUIDELINES REGARDING TREATMENT OF ABSENCES DUE TO NORMAL PREGNANCY

I. INTRODUCTION

Recently, six companies in the Bell System (Illinois, Southern, South Central, New York, Long Lines and Pacific) have been sued by parties attacking the legality of their sickness and accident disability programs. The crux of these charges is that the failure to treat normal pregnancy as a disability under sickness and accident disability programs, constitutes discrimination against female employees on the basis of sex. Other major employers, such as General Motors, General Electric, and Delta Air Lines,[1/] are facing similar legal challenges, and initial court decisions are now being rendered. For example, a federal district court in Atlanta recently held that Delta Air Lines could not require female employees to leave work at a specific time prior to delivery, but that absence due to pregnancy and childbirth need not be covered under an accident and sickness disability program. Newmon v. Delta Air Lines, Inc., Civ. No. I5681 (N.D. Ga., Dec. 31,

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1/ Grogg v. General Motors Corp., 73 Civ. No. 63(KTD)(S.D.N.Y.) Gilbert v. General Electric Co., No. 142-72-R (E.D.Va.); Newmon v. Delta Air Lines, Inc., Civ. No. I5681 (N.D. Ga.).

1973). But see, Wetzel v. Liberty Mutual Insurance Co., Civ. No. 72-169 (W.D. Pa., Jan. 9, 1974).

Since no company in the Bell System treats normal pregnancy as an accident or sickness disability, the implications of these pending cases will reach beyond the companies directly involved. Every company in the System will be affected by the results of these suits. In light of these legal challenges to current sickness and accident disability programs, it is appropriate to review the operation of the Bell System sickness and accident disability program and to estimate its current effect on employees and the effects which would result by treating pregnancy as a sickness or accident disability.

II. PRESENT DISABILITY PLANS

The sickness and accident disabilities of Bell System employees are classified, for record keeping purposes, into seventeen basic groups (see Table 1) which cover every disability recognized under the various plans within the System. For example, disabilities are grouped into infective and parasitic diseases, mental disorders, diseases of the circulatory system, the digestive system, the musculoskeletal system, and even accidents, poisonings and violence. Within each of these groups, the System's records reflect, by sex, the frequency of occurrence of each group of disability, the

EXHIBIT E-6 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

number of disability absences, and the duration of these absences (see Tables 2 and 3).

An examination of the Bell System sickness and accident disability figures for the fiscal year 1970-71 (see Table 2), reveals that in sixteen of the seventeen disability group classifications the frequency rate of women absent from work was higher than for men; the number of cases of women disabled was higher than for men; and women lost more total days from work than men.2/ Finally, an examination of the severity rate (average duration) of these absences indicates that women were generally absent for a longer period than men. While women were 48.57% of the System's total work force eligible to receive disability payments as of December 31, 1970, a review of the System' disability statistics, including all disability groups, reveals that they received wage benefits for 64.65% of the total days for which such benefits were paid during fiscal year 1970-71. Thus, even without treating normal pregnancy as a sickness or accident disability, in fiscal year 1970-71 women collected benefits for a percentage of days far in excess of their percentage of the company work force. It should be recognized that wage

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2/ The one disability group category where men are absent at a higher rate than women, experience more disabilities than women, and lose more disability days than women is diseases of the circulatory system, which includes heart attacks and similar cardiac problems. (See Tables 2 and 3.)

replacement benefits were paid to women absent on account of complications of pregnancy and childbirth.3/

Fiscal year 1971-72 reflects the same sort of pattern as 1970-71 (see Table 3). In the same sixteen of seventeen disability group classifications, women were absent at a higher rate than men; experienced more disabilities than men; and lost more days from work than men. Finally, the statistics again show that generally, when absent, women were absent for longer periods than men. Although women made up 48.29% of the Bell work force eligible for disability payments as of December 31, 1971, they accounted for 63.45% of the total days for which benefits were paid in all disability groups during fiscal year 1971-72. Again this disproportionate figure reflects the present operation of the Bell Companies' disability programs, which are under attack, and which do not treat normal pregnancy as a sickness or accident disability.

III. THE EFFECT OF TREATING PREGNANCY AS A SICKNESS OR ACCIDENT DISABILITY

Since disability payments for pregnancies would be made only to women, treating normal pregnancy as a sickness or accident disability would mean that women employees would receive even greater benefits than the disproportionate benefits they already receive.

3/ See classifications 11 and 15, Tables 1, 2, and 3.

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

In late 1973, eight companies in the System performed a manual count of the number of maternity leaves that had been granted in 1972. These companies then compared this count with the total number of female employees as of December 31, 1972. The results are as follows:

Company	Number of Maternity Leaves Granted in 1972	Number of Female Employees as of December 31, 1972	Percent
New York	2,406	48,115	5.00
New Jersey	761	16,113	4.73
Chesapeake and Potomac	1,274	23,861	5.34
Ohio	732	13,321	5.50
Illinois	1,036	20,968	4.94
Northwestern	834	14,596	5.72
Southwestern	1,700	39,316	4.33
Pacific Northwest	533	9,969	5.35
Totals	9,276	186,259	4.98

By projecting the results of this eight company survey,[4/] a fairly accurate estimate can be made of the System-wide effect of treating pregnancy as a sickness or accident disability.

The Bell System Companies employed approximately 434,400 women eligible for disability benefits in fiscal

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4/ The companies involved in this court have almost 40% of the System's female employees and represent a cross section of the entire Bell System. Thus, there is no reason to believe that the composite figures presented by this survey would not be valid estimates of figures for the entire System.

year 1970-71 (as of December 31, 1970). Assuming 5% of these women took maternity leave in that fiscal year, the System would have had to provide disability payments for approximately 21,700 pregnancies if maternity had been treated as a sickness and accident disability during this period. No figures have yet been compiled that accurately reflect the average length of maternity leave taken throughout the System; nevertheless, figures compiled by Illinois Bell indicate that within that Company the average maternity leave per pregnancy has been approximately 5-1/2 months. Of course, it is reasonable to assume that most women would not be disabled for 5-1/2 months as a result of normal pregnancy and childbirth. Indeed, the testimony of medical experts for both sides in a court action pending against General Electric (see note 1 supra) that is similar to the suits the Bell Companies are facing indicates that the total period of disability may be less than six weeks. However, two courts have held in a related context that eight weeks may be an appropriate estimate of the time necessarily lost from work due to pregnancy.5/ Using such an eight week period for calculations, and keeping in mind that the actual period could be found to

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5/ Health v. Westerfield Board of Education, 345 F. Supp. 501 (S.D. Ohio, 1972); Doe v. Osteopathic Hospital, 3 FEP 1128 (D. Kans., 1971).

be considerably longer, or shorter,[6/] if the estimated 21,700 women who took maternity leave in fiscal year 1971 had received disability benefits for eight weeks each, an additional 1,215,200 disability days would have been covered in that year. Thus, instead of receiving benefits for almost 65% of the days for which disability payments were made, women, who represented approximately 49% of the System work force eligible for benefits during this period, would have received benefits for over 72% of the days for which disability payments were made.

Similarly, if 5% of the System's fiscal year 1971-72 female work force eligible for disability benefits, approximately 461,500 women as of December 31, 1971, had received disability benefits for maternity absence in that period, a total of approximately 23,000 pregnancies would have been covered. Assuming disability payments had been made for an

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6/ A recent example of the conceivable magnitude of payment periods occurred in Illinois. The State Fair Employment Practices Commission awarded two claimants disability payments for the full six months of their maternity leaves. Elliott v. Turner Co., (Charge No. 72C-1155, December 12, 1973); Bennett v. Turner Co., (Charge No. 72C-1156, December 12, 1973) If the estimated 21,700 women who took maternity leaves in the System during fiscal year 1970-71 had received disability payments for the entire period of their 5-1/2 month maternity leave (145 days), an additional 3,146,500 days of disability benefits would have been paid in the System. In other words, pregnant women would have received benefits due to their pregnancies for more disability days than all other women received for their non-pregnancy related disability absences; furthermore, pregnant women would have been paid for nearly twice as many disability days due to their pregnancies than were paid to men for all their disabilities!

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PLAINTIFFS' SECOND INTERROGATORIES

average of eight weeks for each of these pregnancies, an additional 1,288,000 disability days would have been paid in 1971-72. Therefore, women, who represented approximately 48% of the System work force during that period, would have collected 71% of the total disability days.

If pregnancy had been covered during these periods as an eight week disability, 5% of the women, or approximately 2.5% of the System's work force, would have accounted for approximately 21% of the total days for which disability payments were made in both fiscal years 1970-71 and 1971-72. No other single disability group -- even including both sexes -- could generate so large a number of disability days for which benefits would be paid.

These figures demonstrate that treating pregnancy as a sickness or accident disability would create a situation far different from the picture of "equality" painted by opponents of the present disability programs. Indeed, the statistics reveal that women employees already are receiving a significantly greater number of paid benefit days for disabilities than are male employees. Treating pregnancy as a sickness or accident disability would further reduce the percentage of disability days paid to male employees.

Moreover, there can be no doubt that the cost of treating normal pregnancy as a sickness or accident disability

EXHIBIT E-6 ANNEXED TO ANSWERS TO
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would be immense. Using the previously mentioned figures which were compiled in late 1973 as the basis for projection, representative costs can readily be estimated. All employees are entitled to disability wage payments on the basis of seniority. An Illinois Bell study indicates that the average seniority of women taking maternity leave is between two and five years. Employees with 2-5 years service may receive up to full wage pay for their first week of absence as a departmental expense paid by the Company. Disability plan wage payments begin on the eighth calendar day of absence. During the first four weeks of a disability period, an employee with 2-5 years of service receives full wage pay. Subsequently, for a forty-eight week period disability payments equalling one-half the weekly salary are paid.

The average weekly wage of women with 2-5 years seniority, who were employed by the System Telephone Operating Companies in fiscal year 1970-71 as of December 31, 1970, was $111.75. If eight weeks of disability benefits had been made to pregnant employees, using the average length of Company service of those taking maternity leave during this period and the average wage of these female employees during 1970-71, the cost impact of wage continuation payments that would result from treating pregnancy as a sickness or accident disability can be estimated. Given the figures discussed above, the wage costs

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

of treating each pregnancy as an eight week disability would have been $726.39 per pregnancy.[7] The System-wide costs for all 21,700 pregnancies in fiscal year 1970-71 would have been $15,762,663 in basic wages; in other words, approximately 2.5% of the System's work force would have received 14.47% of the basic wage benefit dollar. This does not include other wage related costs such as Social Security, pensions, health insurance, etc.[8]

The figures for fiscal year 1971-72 are comparable. The average weekly wage of female employees with 2-3 years seniority, who were employed during this period as of December 31, 1971 was $127.34. Assuming the same seniority and average disability figures applied to fiscal year 1970-71 above, the wage costs of treating each 1971-72 pregnancy as a sickness and accident disability would have been $827.71. The costs for all 23,000 pregnancies within the System during this

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7/ This assumes that a pregnant employee received full wages for her first week of absence (which may be paid by the Company as a departmental expense), followed by full pay for the next four weeks' absence and half pay for the last three weeks' absence under the Company's disability plan.

8/ This also does not include the cost of establishing and administering a program to determine the length of each normal pregnancy disability and the amount of disability payments to be made for each such pregnancy.

EXHIBIT E-6 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

period would have been $19,037,330[9/] in basic wages, not including other wage related costs. Again, had normal pregnancy been treated as a sickness and accident disability, a significant portion of the basic wage benefit dollar (13.90%) would have been concentrated in a small percentage of the work force (approximately 2.5%).

IV. MATERNITY LEAVE RETURN RATE

No System-wide figures indicating the precise work return rate from maternity leave and other disabilities have yet been prepared; nevertheless, Illinois Bell Telephone Company recently completed such a study. The results clearly establish another factor indicating the questionable equity and financial wisdom of treating pregnancy as though it were a sickness or accident disability. The Illinois study reveals that in calendar year 1972 all but approximately 3% of those employees who were absent as a result of presently covered

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9/ These figures represent an average of eight weeks disability for each pregnancy. As noted earlier, see footnote 6, this figure could be increased significantly by administrative or judicial decisions. If the entire period of an average 5-1/2 month maternity leave were treated as a disability for purposes of the sickness and accident program, the fiscal year 1971 and 1972 costs of the Bell Companies in basic wages alone, would have been $32,739,007 and $39,539,070 respectively.

sickness and accident disabilities returned to work.[10/] By comparison, however, during the same period more than 48% of employees who took maternity leave did not return to the Illinois Bell work force following their leave. Projecting the results of this study to the entire System, the inequity of covering pregnancy as a sickness or accident disability is manifest. If the treatment of pregnancy as a sickness or accident disability would have accounted for between approximately 15.7 million dollars of basic wage benefit payments in fiscal year 1971 and 19.0 million dollars in fiscal year 1972 (assuming an eight week disability period for both fiscal years) approximately 7.6 and 9.1 million dollars of the yearly wage benefits paid in these respective fiscal years would have gone to claimants who never returned to work! These wage payments would not have served as a bridge to carry workers between periods of employment, which is the basic purpose of disability benefits, but instead would have constituted a unique form of severance pay.

10/ The vast majority (almost 90%) of employees who did not return to work after absences as a result of presently covered sickness and accident disabilities either died or became eligible for company pensions. Only 0.57% of Illinois Bell's employees actually resigned from company service after absences presently covered by the sickness and accident disability program.

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

V. CONCLUSION

The statistical evidence discussed above highlights the effects of treating pregnancy as a sickness and accident disability. An examination of this evidence raises serious doubts about the equity of so treating pregnancies. Already women receive wage benefits for days of absence as a result of sickness and accident disabilities that are greatly disproportionate to the wage continuation benefits which men receive. Treating pregnancy as a sickness and accident disability no matter how brief the average period of such disability, can only further distort this important benefit in favor of female employees. The cost impact of accomplishing this questionable result will be immense. Furthermore, the wage benefit payments received under this coverage, although amounting to millions of dollars, will inure to the benefit of only 5% of the Bell Companies' female employees -- less than 2.5% of the work force. Finally, a look at the work return rates of employees taking maternity leave indicates that nearly half of the benefits paid for pregnancy would be paid to women who will never return to the System's work force.

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

TABLE 1

SICKNESS AND ACCIDENT SUMMARY
BELL SYSTEM

Group 01	Infective and parasitic diseases
Group 02	Neoplasms
Group 03	Endocrine, nutritional and metabolic diseases
Group 04	Diseases of blood and blood-forming organs
Group 05	Mental disorders
Group 06	Diseases of nervous system and sense organs
Group 07	Diseases of circulatory system
Group 08	Diseases of respiratory system
Group 09	Diseases of digestive system
Group 10	Diseases of genitourinary system
Group 11	Complications of pregnancy, childbirth and puerperium
Group 12	Diseases of skin and subcutaneous tissue
Group 13	Diseases of musculoskeletal system and connective tissue
Group 14	Congential anomalies
Group 15	Perinatal morbidity and mortality
Group 16	Symptoms and ill-defined conditions
Group 17	Accidents, poisonings and violence

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

TABLE 2

TOTAL BELL SYSTEM SICKNESS AND ACCIDENT FIGURES FOR FISCAL YEAR 1970-71

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness	Total Days L
01	M	2,726	5.9	26.3	71,647
	F	5,422	12.5	27.1	146,930
02	M	1,204	2.6	66.6	80,173
	F	4,991	11.5	55.6	277,647
03	M	745	1.6	38.9	28,951
	F	1,134	2.6	51.8	58,785
04	M	93	0.2	40.6	3,774
	F	535	1.2	36.7	19,634
05	M	1,527	3.3	57.2	87,285
	F	3,306	7.6	67.6	223,503
06	M	1,560	3.4	44.3	69,064
	F	2,592	6.0	42.1	109,132
07	M	4,637	10.1	69.4	321,773
	F	3,582	8.2	62.2	222,723
08	M	8,693	18.9	19.5	169,537
	F	18,397	42.3	19.2	353,955
09	M	5,488	11.9	38.1	208,816
	F	5,744	13.2	41.5	238,532
10	M	2,289	5.0	29.3	66,982
	F	11,137	25.6	33.6	374,707
11	M	-	-	-	-
	F	3,104	7.1	27.8	86,438
12	M	1,154	2.5	25.6	29,574
	F	1,617	3.7	28.6	46,319

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

13	M	3,941	8.6	46.4	182,686
	F	5,142	11.8	53.0	272,352
14	M	149	0.3	51.6	7,668
	F	304	0.7	42.2	12,822
15	M	-	-	-	-
	F	328	0.8	58.2	19,084
16	M	1,391	3.0	29.8	41,418
	F	2,909	6.7	34.6	100,758
17	M	5,694	12.4	37.4	212,981
	F	7,696	17.7	42.9	330,467

	Days Lost
Male	1,582,329
Female	2,893,788
TOTAL	4,476,117

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

TABLE 3

TOTAL BELL SYSTEM SICKNESS AND ACCIDENT FIGURES FOR FISCAL YEAR 1971-72

Disability Category	Sex	No. of Cases	Frequency Rate Per 1,000 Employees	Severity Rate (average duration of illness	Total Days Lo
01	M	2,594	5.2	30.4	78,904
	F	5,108	11.1	29.3	149,470
02	M	1,305	2.6	70.0	91,352
	F	5,390	11.7	57.6	310,518
03	M	719	1.5	45.7	32,832
	F	1,172	2.5	50.1	58,695
04	M	121	0.2	43.5	5,252
	F	462	1.0	43.9	20,281
05	M	1,568	3.2	62.4	97,893
	F	3,445	7.5	66.6	229,558
06	M	1,557	3.2	47.3	73,652
	F	2,584	5.6	44.7	115,477
07	M	5,007	10.1	73.0	365,723
	F	3,950	8.6	61.7	243,865
08	M	10,093	20.4	18.9	191,101
	F	21,789	47.2	18.7	408,365
09	M	5,699	11.5	39.4	224,655
	F	5,994	13.0	42.3	253,522
10	M	2,441	4.9	29.2	71,290
	F	11,262	24.4	34.7	391,224
11	M	-	-	-	-
	F	2,738	5.9	29.0	79,410
12	M	1,325	2.7	28.0	37,150
	F	1,627	3.5	30.1	48,936

EXHIBIT E-6 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

13	M	4,129	8.4	49.4	203,846
	F	5,419	11.7	55.8	302,345
14	M	172	0.3	46.2	7,941
	F	339	0.7	53.5	18,119
15	M	-	-	-	-
	F	255	0.6	59.5	15,164
16	M	1,487	3.0	30.3	45,111
	F	3,103	6.7	38.0	118,036
17	M	6,597	13.3	40.0	264,127
	F	7,904	17.1	43.6	344,862

	Days Lost
Male	1,790,829
Female	3,107,847
TOTAL	4,898,676

AT&T

EXHIBIT L ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

S. L. King, Jr.
ASSISTANT VICE PRESIDENT

May 21, 1971

To All Personnel Representatives:

Attached for your information is a copy of a recent revision in policy regarding maternity leaves of absence for employees of the General Departments.

In addition, the following statement has been deleted from the application form: "In making this application I understand there is no assurance of reemployment in case the leave of absence is granted. If I am not reemployed at the end of the leave, this application will be considered as a voluntary termination of my employment."

Sincerely,

Stanley L. King, Jr.

Attachment

EXHIBIT L ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

Amer. Tel. & Tel. Co. General Departments

PERSONNEL PRACTICES MANUAL

SECTION VII - LEAVES OF ABSENCE

Leaves of Absence for Maternity 7.25

A leave of absence, usually for one year, is granted for maternity.

No administrative rule or guide shall be established specifying the month when such leaves shall start. The starting date shall be determined on an individual basis according to the employee's wishes and the nature of the job. A supervisor who is concerned about the prudence of an employee's continuing to work during pregnancy should confer with the Medical Office about the appropriateness of asking the employee to obtain a written opinion from her personal doctor.

For employees at work locations in New Jersey, the Temporary Disability Benefits Law provides disability benefits for not more than four weeks immediately preceding the child's birth and not more than four weeks immediately following the birth. This may have a bearing upon the employee's wishes.

Under Federal and State government administrative rulings reemployment rights are normally assured. An applicant for reemployment shall not be refused reinstatement in her original job or in a position of like status and pay except with the concurrence of the Personnel Director - Administration in the Personnel Relations Department.

*Change

May 14, 1971

EXHIBIT M ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

Long Lines Policy - Maternity Leaves of Absence

September 19, 1967

MEMORANDUM TO: District Level and Above Supervisors

This is a notice of change of policy and procedures regarding maternity leave of absence.

The new policy extends the period of approved work from the end of the sixth month to the end of the seventh month providing the employee is experiencing a normal pregnancy.

Studies have shown that the first three months often comprise the most critical phase of a pregnancy and for this reason doctors sometimes recommend that expectant mothers terminate their employment in the first trimester.

The following steps should be taken when the employee informs her supervisor of her pregnancy.

1. The supervisor should obtain Form U574, (Attachment 1) and a pre-addressed franked envelope to the appropriate Area Medical Officer. (Attachment 2)

2. The supervisor should complete lines 1 through 4 on the U574 and then forward the form and the envelope to the employee.

3. The employee should complete lines 5 through 7 and furnish her attending physician with the form and envelope.

4. The attending physician is then requested to complete lines 8 through 10 and forward the form to the Area Medical Officer.

5. The Area Medical Officer will review the form to determine final disposition and notify her supervisor as indicated on lines 3 and 4 accordingly.

In any event, Company Policy requires that the employee commence her leave of absence at the end of the seventh month.

EXHIBIT M ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

MEMORANDUM

The request for a one-year leave of absence, Form U271, shall continue to be forwarded to the Personnel Supervisor via lines of organization in accordance with present practices.

Consideration for maternity leave not consistent with the foregoing procedures will be reviewed by the Personnel Supervisor and the Area Medical Officer.

/S/
J. F. McCahan
Chief Medical Officer

EXHIBIT P-1, ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

(Excerpts from Testimony of Daniel J. Culkin, F.C.C. Docket 19143, Vol. 62, December 7, 1972, p. 13)

* * *

Q Question No. 18, in the first part of your answer you used the term "minimal training." What did you mean by minimal"?

A I mean where training of only a few days would be required.

Q Five days or less?

A Five days or less.

* * *

(Excepts from Testimony of Daniel J. Culkin, p. 29)

* * *

Long Lines has experienced a decrease in the last six years in the number of women in its work force. This decrease is due largely to a transfer of toll traffic operators to local operating companies. The 1971 figure of 11,268 represents a loss of 1.2 percent.*** Females represented 38 percent of all engagements in 1969, 34.2 percent in 1970, and 37.1 percent in 1971.

* * *

EXHIBIT P-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

F. C. C. DOCKET 19143

VOL. 62

December 7, 1972

FCC STAFF EXHIBIT 36-K

EXHIBIT P-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

American Telephone & Telegraph Company - Long Lines Department
Response to Ms. Longo's questions dated November 24, 1972

1. Q. For non-management employees does continuity of service determine eligibility for:
   a. Pension credit?
   b. Wage progression credit?
   c. Sickness disability benefits?

   A. a. Accredited continuous service is the basis for pension credit.
   b. Under Long Lines contracts, yes, except in the case of leaves of absence for Union Business which carry service credit up to 4 years but no wage progression credit and in the case of sickness disability benefit periods where absence in excess of thirty days carries service credit but not wage progression credit.
   c. Accredited continuous service determines the eligibility and the extent of sickness disability benefits under our Plan.

2. Q. For management employees does continuity of service determine eligibility for:
   a. Pension credit?
   b. Wage progression credit?
   c. Sickness disability benefits?

   A. a. Management employees are treated in the same manner as non-management for pension credit.
   b. Management employees are not on wage scales and hence are not involved in wage progression credit.
   c. Our sickness disability benefits plan makes no differentiation between management and non-management.

3. Q. a. Are benefits accompanying personal leaves administered differently depending on the length of leave?
   b. Are personal leaves divided into categories by length? What are those categories (i.e., leaves of one month or less and leaves of more than one month).
   c. If the answer to 3.a. is "yes", answer the following questions regarding each category of personal leave.
      (1) For the duration of leave, do non-management employees accumulate:
         (a) Wage progression credit?
         (b) Pension credit?

      (2) For the duration of the leave, do management employees accumulate:
         (a) Wage progression credit?
         (b) Pension credit?

      (3) Are management, non-management, or both types of employees eligible during personal leaves for sickness disability benefits? If so, during which category of personal leave?

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

A. a. Yes, Departmental Personal leaves up to one month carry full service credit. Personal leaves over one month, approved by the Benefit Committee, carry only one month service credit.

b. Yes, leaves of not more than one month, approved by the departments, and leaves of over one month approved by the Benefit Committee.

c. (1) (a) Not beyond the first month.
(b) Not beyond the first month.
(2) (a) Management employees are not on wage progression schedules.
(b) Not beyond the first month
(3) No.

4. Q. What are the legitimate reasons for personal leave as they appear in official written policies?

a. If not specifically stated in official written policies, would caring for a sick member of an employee's immediate family be considered a legitimate reason for the granting of a personal leave? If the answer to the previous question is "yes", would that include a male employee? If the answer to the previous question is "yes", would that include a male employee whose wife is healthy (another member of the family is hypothesized as being ill)?

b. If not specifically stated in written policies, would the care of a healthy pre-school age child or infant by the parent (employee) be considered a legitimate reason for the granting of a personal leave? If the answer is "yes," would a leave be granted for 6 months? for 1 year? If child-care is a legitimate reason for the granting of personal leave, would that policy apply to both male and female employees? To your knowledge have any male employees requested and/or been granted such a leave? If so, how many?

c. Where do official written policies on personal leave appear?

A. The Supervisors Guide For Long Lines Benefits mentions the following as possible reasons for which personal leaves might be granted:

To care for disabled member of employee's family.
For rest and change of environment where the employee has been certified as able to work.
For attendance at a school, college or other institution of learning.
Pending re-employment when moving to a distant city and intending to apply for work with a Bell System Company
Any other absence from Company service, when in the opinion of the Committee the facts are sufficient to warrant such action.

No differentiation is made between male and female employees in the treatment of personal leaves of absence. Child care could be a reason, if adequately justified, under the last mentioned general reason. The length of leave, up to one year, would be determined by the circumstances which the Committee felt justified the leave. To my knowledge, Long Lines has had no requests by a male employee for personal leave of absence for child-care.

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

5. Q. Before personal leaves are granted, are all such employees asked if they intend to return to work at the end of the leave? If only employees taking a certain category of personal leave are asked if they intend to return, please specify those categories of leave.

A. In the natural course of management activity, the supervisor would desire to know an employee's future expectations when a leave of absence is requested so that future manpower requirements can be planned. When such information is not obvious or offered, it is most probable that the question is asked. On the basis of experience, however, it is well known that many employees change their plans prior to or upon expiration of their leaves of absence.

6. Q. a. Before maternity leave is granted to an employee, is the employee asked if she intends to return to work at the end of the leave?

b. Before a union business leave is granted, is the employee asked if (he, she) intends to return to the company at the end of the leave?

c. Before a military leave is granted, is the employee asked if (he, she) intends to return to the employ of the company at the expiration of the leave?

A. The answer to question 5 applies to these three questions as well. It may be informative, however, to add that the granting of these leaves is not contingent on the employee's reply.

7. Q. During the duration of a leave for union purposes, does the employee on leave accumulate:
a. Wage progression credit? How long?
b. Pension credit? For how long?

A. Under the Long Lines contract, the employee would receive service credit and therefore pension credit for up to four years of accumulated leave of absence for union purposes. During the subsequent permissible two years of leave the employee would not receive these credits. No wage progression credit is provided for during any of the six years of permissible leave.

8. Q. During the duration of a leave for union purposes, is the employee eligible for sickness disability benefits, and if so, for how long?

A. The employee is not eligible for sickness disability benefits during a leave for union business.

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

9. Q. a. Does the doctor of the pregnant employee determine the date the employee's maternity leave shall commence? If not, what company official or employee is responsible for determining the date at which an employee's maternity leave shall commence? If the decision is a joint one between the employee's doctor, and the company official, who decides the date of commencement of the leave when there is a dispute? If any company employee or official who participates in the decision as to the commencement of maternity leave is a medical doctor, is that doctor an obstetrician? If a company physician participates in the decision of when an employee shall commence maternity leave, does that physician keep current on the employee's health? If so, by what means?

b. Answer all questions in 9.a. as if they were in regard to the date the employee should return to work and the maternity leave terminated?

A. The Long Lines normal procedure is to request that the employee's doctor indicate to what date it is safe for the employee to continue her duties. A Medical Director reviews this reply to assure that no misunderstanding is present and that the employee's health is therefore reasonably protected by the date suggested. Since both doctors prime interest is the objective of safeguarding the employee, we have anticipated few cases of dispute and, to date, this expectation has been entirely true. In general, it is unlikely that our Medical Directors would be obstetricians, however if such advice were considered to be needed by the medical office, arrangements would be made for the use of a specialized consultant.

Since maternity leaves of absence are generally of considerable duration (up to a year) and usually extend several months beyond the date of delivery, the employee is ordinarily quite recovered before returning to work. However, where she has not obtained her own physician's approval to return, review of the case by our Medical Director is arranged for.

10. Q. Is it company practice, where the nature of the job precludes continued work but other less arduous work that the pregnant employee could safely perform is available, that the employee should be given such work and be "red circled" at her former higher rate where the company practice is to treat other employees (men) in that fashion?

Is it company policy to "red circle" an employee returning from maternity leave if the nature of the job precludes continued work but other less arduous work that the returning employee could safely perform is available? If so, for what period of time is the returning employee red circled?

EXHIBIT P-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

10. A. Where a pregnant employee is temporarily assigned to less arduous work, it is our practice, to treat her, either by "red circling" or by temporary assignment with existing title, in the same manner as any other employee, male or female, who for some temporary physical restriction is similarly "red circled" or reassigned.

No practice has been established with respect to the second part of this question because, to the best of my knowledge, no employee has returned from a maternity leave and required such treatment.

11. Q. What is the minimum length of maternity leave for non-management employees? May the leave be extended. For how long? If an employee on maternity leave wishes to care for the newborn infant and additional leave time is granted, is that additional leave time a maternity or personal leave? For how long are such additional leaves granted?

A. No set practice has been established with regard to minimum length of maternity leaves as medical advice to the employee has been controlling. Where employees, with their doctors concurrence, have requested short leaves and later desired extension of them, extensions have been granted up to a total time of one year. Presumably such extensions often relate, at least in part, to care of the infant and we have not differentiated in terminology between the originally requested period of leave and its extension.

12. Q. Answer question eleven in regard to management employees.

A. Management and non-management employees are treated alike in the matter of maternity leaves.

13. Q. Are female job applicants tested for pregnancy? If only some are tested, specify which ones. What tests are used?

A. Female job applicants are not tested for pregnancy.

14. Q. Are female job applicants asked if they are pregnant? If they plan to become pregnant?

A. No, applicants are not asked if they are pregnant or if they plan to become pregnant.

15. Q. Are all known pregnant job applicants asked to reapply after the termination of pregnancy?

A. No. All applicants not hired are encouraged to reapply after the termination of the pregnancy.

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

16. Q. How does the company ascertain whether a female applicant is pregnant?

A. By observation or if she volunteers the information

17. Q. Has it ever been company policy to request draft eligible males to reapply for jobs? If this policy has changed, please give the date and the changes. Is it company policy to request males with lottery numbers (who are likely to be called for service in the armed forces) to reapply for jobs? If this policy has changed, please give the date and the changes. Are male job applicants asked on the application form or by interviewer if they intend to enlist or volunteer for the armed forces?

A. The company has always considered draft eligible males for all jobs. Males with low lottery numbers who are likely to be called for military service in the near future are encouraged to reapply. Male job applicants are not asked if they intend to enlist or volunteer for the armed forces.

18. Q. If pregnant applicants are hired, may they be hired for any job within the company? If the answer is "no" to the previous question, what criteria determine which jobs the pregnant applicant is not eligible for? Who in the company determines the applicable criteria?

A. Pregnant applicants can be hired into all jobs when minimal or no training is required and when the job presents no hazards to the employee or her unborn child. The criteria used to determine which jobs the pregnant applicant is not eligible for are:

a. Training time required.
b. Job hazards to the employee or her unborn child. Criterion a. is determined by the employment office. Criterion b. is determined by the Medical Department.

19. Q. If pregnant job applicants are restricted to jobs which are considered non-hazardous to the employee or the unborn child, which jobs are considered hazardous? Who determines applicable criteria for the definition of a hazardous job?

A. Long Lines has no jobs specifically identified as hazardous. However, many jobs have certain aspects of their nature or environment which could be hazardous to a pregnant worker. Each case is considered on an individual basis considering such factors as: length of pregnancy, personal doctor's recommendation, and the job description. Job factors such as amount of climbing involved, length of time spent standing, requirement for physical labor (construction gang, etc.), and noise level, etc. are taken into consideration.

EXHIBIT P-2 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

20. Q. Do sickness disability benefits cover medical costs associated with an employee's abortion? If the answer is "yes" does that include both spontaneous and intentional abortions?

A. No. Sickness disability benefits do not cover medical costs for any reason. Rather, sickness disability benefits relate to wages which might be lost due to absence from work for sickness.

21. Q. Answer question 20. in regard to the medical expense program.

A. Medical costs for abortion, spontaneous or intentional, are covered under the medical expense program.

22. Q. Do non-management employees on a sickness disability absence accumulate:
a. Wage progression credit?
b. Pension credit?

A. Under the Long Lines contract, during a period on sickness disability benefits a non-management employee receives wage progression credit for the first month and not for the remainder. Service credit, which is directly used for pension credit, is received for the entire period.

23. Q. Answer question 22 for management employees.

A. Management employees, since they are not on wage scales, are not involved in wage progression credit. They receive service credit, and therefore pension credit, for the entire period in the same manner as non-management.

24. Q. Do non-management employees on maternity leave accumulate:
a. Wage progression credit?
b. Pension credit?

A. Non-management employees on maternity leave receive wage progression credit, service credit and pension credit for the first month of leave only. They do not receive such credits for the remainder of the leave.

25. Q. Answer question 24 for management employees.

A. Management employees are not on wage scales and so are not involved in wage progression credits. They receive service and pension credits while on maternity leave for the same period as non-management employees, namely, one month.

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

6. Q. Are non-management employees on maternity leave eligible for sickness disability benefits. Answer the same question for management employees.

A. No. This applies to management and non-management employees alike.

7. Q. Are employees on military leave paid a differential for any period of time? If so, for how long and how is the size of payment determined?

A. Under the Long Lines contract, employees on short military leaves for training duty or emergency service in the guard or militia will receive the difference between normal company pay over government pay for the first eleven days of such service in any one calendar year. Employees on military leaves inducted under the Selective Service Act, who are members of the reserve ordered to active service or who enlist or volunteer for active duty, if they have less than one year of net credited service, will receive the difference of their company pay over their government pay for the first two weeks of military service. If they have one year or more of net credited service, they will receive the difference of their company pay over their government pay for the first three months of military service. In addition, regardless of the length of net credited service, if such employees have qualified dependents they will receive the difference of their company pay over their government pay for a further period of three months.

28. Q. Are employees on maternity leave paid a differential for any period of time? If so, for how long and how is the size of payment determined.

A. No payments are made to employees for the period of time on maternity leave.

29. Q. Are all employees, through whom requests for leaves (of all natures) are made, equally conversant with the applicable criteria for determination of what are legitimate reasons for leaves?

A. A Supervisor's Guide for Long Lines Benefits is available to all supervisors and lists many examples of criteria for requesting leaves of absence. Further, each Department or Area have personnel administrators with experience in these matters with whom supervisors may consult. In addition, the Secretary of the Benefit Committee stands ready at all times to provide additional information or knowledge.

EXHIBIT P-2 ANNEXED TO ANSWERS TO
PLAINTIFFS' SECOND INTERROGATORIES

30. Q. When an employee returns from the following leaves, is that employee credited with (his, her) prior service immediately upon return:
a. Personal leave (all categories).

b. Union business leave.

c. Military leave.

d. Maternity leave.

A. Yes, prior credited service is immediately credited.

31. Q. If the answer to any part of questions 30. is "no" specify the amount of time that must elapse, for each type of leave, before prior service is credited.

A. No reply included as answer was "yes".

32. Q. Are all employees who are pregnant and request leave required to take maternity leave. If not, may such employees take personal leave? What criteria are used to determine whether a pregnant employee shall take maternity or personal leave?

A. "Maternity" leaves and "personal" leaves involve the same credits, benefits and privileges during the leave. Maternity leaves, however, are granted with assurance of re-employment which is not necessarily true of personal leaves. It would seem to be ordinarily to a pregnant employee's advantage to request a "maternity leave" because of the re-employment assurance but if an employee preferred to request a leave for other personal reasons instead, such a request would be processed in the usual manner of personal leaves.

33. Q. If pregnant job applicants are restricted as to jobs for which they may be hired, is provision made to transfer such employees to any job for which they would otherwise be eligible at the termination of pregnancy (and/or any maternity leave)?

A. All employees are eligible for transfer to other jobs for which they are eligible under the Upgrade and Transfer Plan.

34. Q. Specify whether your answers would be different for married and unmarried females in questions 9-16, 18-21, 26, 28, 30.a., 31-33.

A. These answers would be no different for married or unmarried females.

EXHIBIT Q-1 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

To
Mr. W. J. Alderson

You wanted a copy of attached to study prior to a discussion next week on leave of absence and on pregnancy benefits, if any.

2/19/71

HOWARD W. LEONHART
Room 1933
Extension 5723

EXHIBIT Q-1 ANNEXED TO ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES February 18, 1971

Absence From Work On Account Of Pregnancy

Many years ago, disability benefits as related to pregnancy, were discussed in a paragraph of Mr. C. J. Schaefer, Jr.'s letter of 2-28-33 to Mr. L. S. Crosby as follows:

> 5. In those cases where the employee's service is interrupted by the onset of disability of pregnancy resulting from other than the normal progress of the condition, she shall, if eligible, receive sickness disability benefits under the Plan according to the practices which apply to other sickness disability cases.

Nausea of pregnancy, threatened miscarriage and miscarriage (usually occurring early in the pregnancy) are considered complications of pregnancy and absences are treated according to the practices which apply to other sickness disability cases (except under the New York State Disability Law where no disability resulting from pregnancy is considered sickness). In the cases of nausea or threatened miscarriage, absence is treated as sickness until pregnancy is considered normal (Medical opinion is that in the case of threatened miscarriage, pregnancy can be considered normal if bleeding has ceased for a continuous period of two weeks. A dilatation and curretage may follow a miscarriage and disability can last from three to four weeks).

If absence from work is precipitated by childbirth occurring while the employee is still on the active payroll, medical certification should be obtained since such a case will ordinarily be eligible for disability benefits. An employee on disability benefits for premature birth will receive such benefits to a point not more than (2) (4) (6) weeks following delivery, unless there is positive medical evidence that more extensive disability results from "complication". If the mother's physical condition is impaired by complications, such as anemia, severe depression or hypertension (which status must be checked by our Medical Department discussing the case with private physician or by examination in Medical office), the employee may be considered eligible for disability benefits until medical advice indicates the complications have disappeared or the limit of disability benefits has been reached.

In the states where it is legal, therapeutic abortion is considered as sickness and where the required absence is of sufficient duration and properly documented, the employee will be eligible for disability benefits.

H.W.L.: ee

SUPPLEMENTAL ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES

(Excerpts: Exhibit R-3)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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* * *

Total Employment Figures

Year	Male	Female	Total	Percent Male	Percent Female
1970	22,527	13,109	35,636	63.21	36.79
1971	22,962	11,302	34,164	67.01	32.99
1972	23,269	12,080	35,349	65.83	34.17
1973	23,265	12,172	35,437	65.66	43.34

DEFENDANT'S REQUEST FOR ADMISSION OF FACTS

(Excerpt: Request Numbers 8 and 9)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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* * *

8. Plaintiff Skipper, while employed by Long Lines left work on maternity leave prior to the time she alleges she was physically disabled from performing her assigned duties.

9. Plaintiff Skipper did not return to work with Long Lines from maternity leave as soon as she alleges she was no longer physically disabled from performing the normal duties of the job to which she eventually returned.

* * *

PLAINTIFFS' RESPONSE AND OBJECTIONS TO
DEFENDANT'S REQUEST FOR ADMISSION OF FACTS

(Excerpts: Response to Requests Number 8 and 9)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Same Title]

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* * *

Request No. 8. Plaintiffs are unable to truthfully admit or deny the matter set forth in Request No. 8 for the reason that Plaintiff Skipper, while employed by Defendant Long Lines, left work at a time suggested by Defendant's policies. A determination as to whether or not disability was present at or about the time her leave commenced requires an expert opinion from Plaintiff Skipper's doctor. The issue of when disability commences represents an issue to be resolved at trial through expert testimony and documentary evidence. Plaintiff Skipper is presently unaware of what factors were considered by her physician in recommending that she discontinue working because of her pregnancy as of August, 1972. Insofar as Plaintiffs are in the process of contacting various medical experts, including Plaintiff Skipper's treating physician, this information will be provided to Defendant when it becomes available.

PLAINTIFFS' RESPONSE TO ADMISSIONS

Request No. 9. Plaintiffs are unable to truthfully admit or deny the matter set forth in Request No. 9 for the reason that Plaintiff Skipper returned to work with Defendant Long Lines in February, 1973, a time she believed consistent with Defendant's policies. A determination of the date on which Plaintiff Skipper ceased to be disabled following birth of her daughter requires an expert opinion from Plaintiff Skipper's doctor. The issue of when disability connected with pregnancy ceases represents an issue to be resolved at trial through expert testimony and documentary evidence. Insofar as Plaintiffs are in the process of contacting various medical experts, including Plaintiff Skipper's treating physician, this information will be provided to Defendant when it becomes available.

* * *

AFFIDAVIT OF MARY K. O'MELVENY, IN OPPOSITION TO SUA SPONTE DISMISSAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Same Title

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARY K. O'MELVENY, being duly sworn, deposes and says:

1. Deponent is associated with the law firm of COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL, attorneys for plaintiffs herein, and submits this affidavit in connection with a brief submitted by plaintiffs at the Court's request on the issue of whether the Complaint herein should be dismissed in the light of the decision of the United States Supreme Court in Geduldig v. Aiello, 42 U.S. L.W. 4905, decided June 17, 1974.

2. A number of facts discussed in plaintiffs' brief are contained in the pleadings and in the interrogatories, and exhibits attached thereto, on file with the Court. Because depositions have not yet commenced in the present case, some of the facts referred to in plaintiffs' brief are derived from other relevant sources. It is the purpose of this affidavit to describe those sources and to attach the material documents as Exhibits for the Court's consideration in determining the issue presently before it.

3. The defendant herein, American Telephone and Telegraph Company, Long Lines Department, is an operating department of American Telephone and Telegraph Company which, through its more than 20 subidiaries, dominates and controls the telephone communications industry in the United States. As an entity, the Bell System is

the largest private employer in the world and, by far, the largest private employer of female workers. Throughout the Bell System there has been a uniform practice and policy not to include absence due to disability arising from normal pregnancy and childbirth within the disability benefit plans of the AT&T subsidiaries. It is this practice and policy which is the core of the claim by the plaintiffs in this action that defendant has violated Title VII of the Civil Rights Act of 1964, as amended.

4. Along with the instant action, there is pending in the United States District Court for the Southern District of New York a companion case against the New York Telephone Company ("Telco" herein) involving the similar failure of that AT&T subsidiary to include within its disability benefits plan absences due to disability arising from normal pregnancy and childbirth. In the Telco case (Communications Workers of America, AFL-CIO, Kathleen Trapper, et al. v. New York Telephone Company and Empire City Subway Company, 73 Civ. 3352 H.R.T.) depositions have been taken of the Secretary of the Telco Employees' Benefits Committee (Frederic H. Schawe), the Secretary of the AT&T Employees' Benefits Committee (Therese F. Pick), and the Telco Medical Department Director (Dr. Gilbeart H. Collings, Jr.). Annexed hereto as Exhibits are copies of the following pages of their depositions which are referred to in the plaintiffs' brief herein:

Exhibit 1: Pick deposition, taken June 6, 1974, page 46.

Exhibit 2: Schawe deposition, taken May 15, 1974, pages 20-21.

Exhibit 3: Pick deposition, taken June 6, 1974, page 5.

Exhibit 4: Collings deposition, taken June 28, 1974, pages 47-49.

Exhibit 5: Schawe deposition, taken May 15, 1974, pages 56-65.

AFFIDAVIT OF MARY K. O'MELVENY

Exhibit 6: Pick deposition, taken June 6, 1974, pages 70-73.

Exhibit 7: Collings deposition, taken June 28, 1974, pages 38-47.

Exhibit 8: Collings deposition, taken June 28, 1974, pages 86-87.

Exhibit 9: Schawe deposition, taken May 15, 1974, page 64.

Exhibit 10: Collings deposition, taken June 28, 1974, pages 31 and 36.

5. Prior hereto a Task Force of the Equal Employment Opportunity Commission prepared a study based upon an extensive investigation by the EEOC pursuant to a Petition filed with the Federal Communications System, Docket No. 19143, alleging nation-wide patterns of employment discrimination by the Bell System companies on the basis of sex, race and national origin. This investigation is embodied in a paper entitled "A Unique Competence: A Study of Equal Employment Opportunity in the Bell System", which was reprinted in the Congressional Record on February 17, 1972, at pages E1243-E1272. A copy of this study (referred to

in plaintiffs' brief as the "Copus Study") is annexed hereto as Exhibit 11.

6. The depositions in the Telco case have not yet extended to medical experts of either plaintiffs or defendants and no expert medical evidence has been elicited in the discovery proceedings to date in the case at bar. However, because such evidence is highly relevant to some of the issues involved herein, and because such evidence has been considered by other District Courts which have ruled upon the question of whether an employer's differential treatment of disabilities relating to normal pregnancy violates Title VII of the Civil Rights Act of 1964, as amended, plaintiffs have annexed as exhibits hereto excerpts from testimony at trial in the case of Gilbert v. General Electric Company, 7 FEP Cases 796 (E.D. Va. 1974) Mehridge, J.) of two medical experts, Dr. Andre E. Hellegers and Dr. David Forrest. These exhibits are:

Exhibit 12: Dr. Forrest, pages 39-43.

Exhibit 13: Dr. Hellegers, pages 261-265.

7. For all of the reasons set forth in plaintiffs'

AFFIDAVIT OF MARY K. O'MELVENY

accompanying Memorandum of Law, the Court is respectfully urged not to order Sua Sponte dismissal of plaintiffs' complaint in this action.

MARY K. O'MELVENY

(Sworn to July 9, 1974.)

EXHIBIT 1, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Therese Pick,
American Telephone & Telegraph Company,
Benefit Committee Secretary)

* * *

Q Under Roman Numeral II, "Leaves of Absence," the first sentence, "Normal pregnancy and childbirth do not constitute sickness under the 'plan for employees' pensions, disability benefits and death benefits'."

Does that refer to the plan in effect for each of the operating companies?

A Yes, it does.

* * *

EXHIBIT 4, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Gilbeart H. Collings, Jr., M.D., New York Telephone Company, Medical Director)

* * *

Q Just to clarify the certification of disabilities, I would like to just mention some disabiling conditions and have you indicate whether they are considered certifiable by the medical department, given your four-fold definition of the factors; severity, adequate care, those factors.

Has the medical department certified sclerosis of the liver as a disability which would qualify under the plan?

A Probably not. I don't know a case. It's possible, we might have.

Q Given the factors which the medical department takes into consideration, would sclerosis of the liver be certifiable?

A Yes, but it's a very rare condition. I think you mean cirrhosis of the liver.

EXHIBIT 4

Q That's how I always understood it.

A If you rephrase it, cirrhosis, then my answer is yes.

Sclerosis is a very rare condition and I doubt that we had one, but we might have.

Q If you did, it would be certifiable.

Would hemophilia be certifiable?

A Again, let me repeat, hemophilia per se has nothing to do with the certification. If a person was disabled as a result of hemophilia, it would be certifiable, but he is certifiable because he is disabled, not because he has hemophilia.

I think you have to make this clear. There is a great confusion in the employee's and in the layman's mind and in many professional minds as to the fact that we have a benefit plan which pays for disease. This is not the case. We have benefits which are paid for disabilities and this is very hard to get across to everybody.

Because you have diabetes doesn't mean that you are entitled to benefits. If you are disabled, no matter what the cause, with the exceptions that I have made which are not covered by the plan, you are entitled to benefits, and so you

EXHIBIT 4

can go down any list you want and the answer is going to be yes to any condition which produces a disability, not because of the condition, because that's irrelevant, but because the impairment is sufficient to prevent the employee from doing useful work.

If you want to go down the list I will be happy to go down the list with you but my answers will be the same.

* * *

EXHIBIT 5, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Fredric H. Shawe, New York Telephone Company, Benefit Committee Secretary)

* * *

Q Based on your knowledge of the Benefit Plan and your understanding of the policies of the company regarding eligibility for benefits, do you have any reason to believe that cosmetic surgery would not be covered under the Benefit Plan?

A No, I have no reason to believe that cosmetic surgery would not be covered under the Benefit Plan, presupposing it was of such nature as to be disabling.

Q Presupposing that it was of such nature to be disabling by that you mean that the medical department had certified it?

A Yes, that's right.

Q Based on your knowledge of the Plan and the policies of the company, do you have any reason to believe that disabilities related to vasectomies would not be covered?

A No, I do not. I believe disabilities due to

EXHIBIT 5

vasectomies would be covered.

Q Based on your knowledge of the Plan and the policies of the company, do you have any reason to believe that disabilities related to menopause would not be covered?

A Such disabilities would be covered.

Q Based on your knowledge of the Benefit Plan and your understanding of the policies of the company, do you have any reason to believe that disorders related to alcoholism would not be covered?

MR. JOHNSON: Would you define "disorders" a little bit? What do you mean by that? Someone who is literally drunk when he shows up or someone who has --

MS. O'MELVERY: Let me break it down a little bit.

MR. JOHNSON: Also, may I ask one question? You are asking now for Mr. Shawe's personal opinion, and you have in mind his earlier testimony today that he does not make policy, he administers it. So, he is not speaking for the company in these series of questions.

MS. O'MELVERY: I understand. He has testified

EXHIBIT 5

he is familiar with the Plan and familiar with the policies of the company relating to eligibility for disability benefits. That is the basis for his knowlege that I am inquiring about.

Q Disorders related to alcoholism, I guess, would fall into two categories; disabilities relating to cures for alcoholism, periods of time absent from the company to, I guess the term is, dry out.

A Yes, we would pay for this, for the reason that such cures are generally under the supervision, at least of the eye if not under the direction supervision of the medical department. This is an effort to effect a cure.

On the other hand, there are -- I'm sure you can appreciate disciplinary situations where a person comes in reeling, and that would be different.

A Well, the other aspect then of disability related to alcoholism might be, for example, cirrhosis of the liver.

A No question.

Q If I asked you the same question based on your knowledge of the Plan and the company's position for disorders

EXHIBIT 5

relating to drug addiction or drug abuse, would your response be the same?

A We have paid benefits for periods of time when an employee was acutely affected, and the attitude would depend upon the medical department -- the determination depends on the medical department.

Q I'm sorry.

The determination of the acutely affected --

A Someone who was acutely affected by an overdose of drugs would receive benefits because they were disabled and quite probably hospitalized.

The determination as to whether or not benefits would be paid would rest with the medical department as to whether or not the employee was receiving effective care. In other words, just the matter of taking drugs is not condoned and not the basis on which we would pay benefits. The question as to whether we would pay benefits in terms of a period of treatment would depend upon the medical department's appraisal of the situation.

Q And that appraisal would include the capacity to work, possibility of rehabilitation?

EXHIBIT 5

A Probability of rehabilitation.

Q You indicated that the company has paid benefits for persons with acute --

MS. O'MELVERY: Read back the witness' answer where he said that benefits were paid.

(Record read.)

THE WITNESS: I would like to really correct my answer.

MS. O'MELVERY: Wait. I have to finish the question.

MR. DISTASIO: Just a moment.

He wants to correct his answer.

THE WITNESS: I want to correct something.

MS. O'MELVERY: All right.

THE WITNESS: I would say for short periods of time. The periods of time sounded rather prolonged and I didn't mean to say that. An acute situation we might very well pay for a very short period of time until we could resolve the situation.

Q Do you have any idea what that length of time

EXHIBIT 5

might be?

A It would depend largely on the medical department's attitude, and I again would not be a party to it.

Q When you said, in response to that question, that, "we have paid benefits," would you indicate, please, the basis for your knowledge of that fact, that benefits have been paid?

A Well, we do know that we have drug problems, and know the people have had perhaps acute situations where they are hospitalized for some reason or other, and I infer this.

Q Based on your knowledge of the Benefit Plan and your understanding of the company policies relating to eligibility for benefits, do you have any reason to think that disabilities relating to emphysema would not be covered?

A They would be covered.

Q Would you have any reason to think that the question of whether an employee was a heavy cigarette smoker would be considered by the medical department in determining that emphysema was --

EXHIBIT 5

MR. JOHNSON: Again I will have to object to that because he has said repeatedly that he is not privy to the medical department's determination, and I don't think he can answer that question about what they would do.

MS. O'MELVERY: I understand that, but he has said he was familiar with cases where payment was made for drug use.

MR. JOHNSON: But then he qualified that, that it's based on an inference, but I will object to the last question you asked on the basis that he is not in the medical department.

MS. O'MELVERY: All right.

BY MS. O'MELVERY:

Q Based on your understanding of the Plan and company policies relating to eligibility, do you have any reason to believe that lung cancer would not be covered?

A It most certainly would be covered.

Q If I asked you the same question with regard to other respiratory disorders, such as bronchitis or chronic

EXHIBIT 5

bronchitis, would your answer be the same?

A Most certainly would be paid.

Q If I asked you the same question with regard to accidents arising out of sports activities, such as skiing, would you have any reason to believe that those accidents would not be covered?

A Again, presupposing, as I'm sure this is all disability, yes, they would be covered.

Q Would the same be true for activities such as skydiving?

A Of course they would be paid. I don't know of any though.

Q Based on your knowledge of the Plan and company policies relating to eligibility for benefits, do you have any reason to believe that injuries suffered in a fight would not be covered under the Disability Plan?

A It would be covered under the Disability Plan.

Q If I asked you the same question for disability relating to mental illness, would your answer be the same?

A It would.

EXHIBIT 5

Q If I asked you the same question with regard to disability relating to food poisoning, would your answer be the same?

A Yes.

Q And if I asked you the same question with regard to attempted suicide, would your answer be the same?

A Yes, it would.

Q Are you, based on your knowledge of the Benefit Plan and the position of the company concerning eligibility for disability benefits, are you aware of any sickness or accident which is not covered by the Plan?

A That's a pretty broad order.

Q I'm assuming the eligibility commencing on the eighth day and then asking for just --

A I can't conceive of any. Again, it all hinges on this matter of disability, inability to work, if you would.

* * *

EXHIBIT 6, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Therese Pick, American Telephone & Telegraph Company, Benefit Committee Secretary)

* * *

Q Do you have any knowledge as to whether New York Telephone Company and Empire City paid disability benefits for inability to work due to cosmetic surgery, and specifically due to removal of varicose veins?

A I have no specific knowledge, but my general belief would be that they pay sickness benefits on account of absence.

Q Would that be your answer for the various categories of cosmetic surgery; for facial, nose surgery, et cetera?

A Yes.

Q Do you have any knowledge as to whether New York Telephone Company or Empire City pays disability benefits to an employee unable to work by reason of a vasectomy?

A I know of no specific case, but my general understanding would be that they would be sickness benefits.

Q Do you have any knowledge whether New York Telephone Company and Empire City would pay disability benefits

EXHIBIT 6

to an employee unable to work because of treatment for cure due to alcoholism?

MR. JOHNSON: That question is a difficult one. Could you describe what you mean by treatment? What treatment would occasion the absence?

MS. O'MELVENY: Well, we went through this a little bit when Mr. Schawe was here and I think I tried to define it as drying out, which is how I understand it.

MR. JOHNSON: My only problem with the quesion is, with Fred Schawe, who was the secretary of the New York Telephone Benefit Committee itself, he could answer that kind of a question much more easily than Miss Pick who is just talking about general knowledge and her opinion.

Now, I think it is reasonable to insist on a little bit more specific questioning in her case since she is not familiar with the day-to-day operations.

Q Let me ask this question then: in your tenure as secretary and assistant secretary, was there any discussion

EXHIBIT 6

that you participated in where the question of disability benefits for employees of the Bell System, including the operating companies, would be given when such employees were undergoing cure treatments for alcoholism?

MR. JOHNSON: I will object unless you say it was some information that was ultimately disseminated to New York Telephone Company and had some bearing upon their policies.

MR. LUBELL: Are you going to direct her not to answer that?

MR. JOHNSON: Off the record.

(Discussion off the record.)

A I believe that it is New York Telephone's policy that where an employee is considered an alcoholic, as an alleged alcoholic and is undergoing treatment and making a good faith effort to be rehabilitated, that during the time that the employee is absent he or she would be paid sickness benefits.

Q If I asked the same question about drugs would you make the same answer?

A Yes. The important phase is this good faith effort to be rehabilitated.

* * *

EXHIBIT 8, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Gilbeart H. Collings, Jr., M.D., New York Telephone Company, Medical Director)

* * *

Q Is that filled in by the medical department?

A Yes, if it's not justified.

Q Can you tell me if the absence is not justified, does that mean to you that it's not certifiable?

A Right.

Q Why would the benefit committee receive this form for a noncertifiable disability?

A They will receive claim forms from supervision for the same absence, and they need to know whether medical is certifying this absence or not in order to make a decision as to whether they are going to pay it or not.

Q In your own experience as medical director, have there been occasions where the benefit committee has paid benefits to employees of the company despite the fact that an entry was entered on the line "Absence not justified"?

A I think so.

Q Do you know what those occasions would have been?

EXHIBIT 8

A No. I would have trouble recollecting that.

Q Do you know how frequently that has occurred?

A Definitely infrequently.

Q During your tenure as medical director have there been occasions where the medical department has certified a disability and benefits have not been paid by the benefit committee?

MR. JOHNSON: You are asking now whether he knows of any such instances?

MS. O'MELVENY: Yes.

A I don't know. I don't know whether I could think of an occasion or not. I would say probably so.

Q During your tenure as medical director, have you had occasion to send to the benefit committee a form of page number 3 of Plaintiffs' Exhibit 5 for an employee who was absent due to normal pregnancy?

A Probably. I don't remember whether I have or not.

You mean personally, myself?

Q Or do you know if the medical department, anyone at the medical department forwarding --

EXHIBIT 8

A Oh, certainly.

Q In the case of normal pregnancy, would this line which says, "Absence not justified," be filled in?

A Yes.

* * *

EXHIBIT 10, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from Deposition of Gilbeart H. Collings, Jr., M.D., New York Telephone Company, Medical Director)

* * *

Q What factors go into a decision that a disability is justified?

A (1) Is there in fact a disability; (2) is it sufficiently severe to prevent the employee from working on his or her regular job; (3) has she or he been accepting and obtaining adequate medical care; and (4) is the nature of the disability one which is or is not covered by the benefit plan.

Q Do you have a definition which you use of the term "disability"?

A A working definition would be that the individual is sufficiently impaired to be unable to perform all of the duties of his or her regular work.

Q Taking those components of your decision about whether disability would be covered under the plan, how do you reach your decision as to whether a disability exists at all? What factors are considered by you in reaching that first area that you set out?

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A I don't think I can answer your question, literally, without a pretty lengthy discussion.

This is like saying, what factors do you consider in arriving at a diagnosis of hepatitis. I can go through all of the physical, chemical, physiological, the factors which went into your --

A But this was a working definition of disability for purposes of advising benefit secretaries, s I recall it.

Is this what you are talking about?

Q Does the medical department have a working definition of disability for all purposes?

A Probably not a singular definition, but in general terms disability is usually related to the question of whether or not the employee can perform his usual duties, and so a working definition for that purpose would be whether or not his impairment was sufficient to seriously interfere with that.

* * *

EXHIBIT 11, ANNEXED TO FOREGOING AFFIDAVIT

(Excerpts from "A Unique Competence: A Study of Equal Employment Opportunity in the Bell System, Undertaken by the Equal Employment Opportunity Commission, Reprinted in the Congressional Record, February 17, 1972, pp. E1243-E1272)

* * *

"A UNIQUE COMPETENCE": A STUDY OF EQUAL EMPLOYMENT OPPORTUNITY IN THE BELL SYSTEM

(Note.-Charts and illustrations not included in the Record.)

PREFACE

This paper is an attempt to summarize in a manageable form the results of an intensive investigation of the employment practices of the Bell System operating companies. The investigation was undertaken by the Equal Employment Commission pursuant to a Petition filed with the Federal Communications Commission, Docket No. 19143, alleging nationwide patterns of employment discrimination by the Bell System companies on the basis of sex, national origin, and race.

The paper is a distillation of only the most salient features of the patterns of employment discrimination revealed by the EECC investigation and the policies and practices which

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are responsible for those patterns. It is intended to facilitate examination of the bulk of evidentiary materials which have been submitted to the FCC.

This paper was written and prepared primarily by David Copus, Lawrence Gartner, Randall Speck, William Wallace, Marjanette Feagan and Katherine Mazzaferri.

CHAPTER 1.-THE BELL SYSTEM

In America, the name Bell System is virtually synonymous with the telephone industry. The organization which Alexander Graham Bell founded in 1877 to market his invention has now grown into one of the largest privately-owned businesses in the world, one which dominates the telephone communications industry in the United States. The Bell companies account for at least 94 percent of all telephones, capital assets, and operating revenues of all telephone companies in the United States.

* * *

The "federal" system. At the head of the nation's huge telephone communications system is the American Telephone

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and Telegraph Company. However, the actual provision of telephone services is accomplished through 22 subsidiary companies, also known as licensee, associated, or operating companies which are shown in Figure 1.

AT&T has potentially absolute legal control over these operating companies through its ownership of at least a majority of the capital stock in all of them and 100% of the stock in 16 of them. Thus, while each operating company on a day-to-day basis exercises autonomy in dealing with local telephone matters, it is acknowledged that "there are nonetheless a great many matters in which AT&T much exert guidance and control."

Since, under this "federal" system, the operating companies provide the actual telephone services while AT&T provides general policy guidelines and supportive services, the operating companies employ virtually all of the Bell System workforce. At the end of 1970, for example, the operating companies employed a total of 732,450 persons, more than half of whom were concentrated in urban and surrounding areas. Consequently, it is the employment practices of the operating companies, primarily in urban areas, which is the subject matter

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of this report.

* * *

Summary

The foregoing distillation of the Bell System's employment structure has highlighted several salient points:

The Bell System is the largest private employer in the world with over half its work force located in 30 major SMSA's.

Bell employees are divided into five major departments, the largest of which are Plant and Traffic. More than two-thirds of all Bell employees are in these two departments.

There are four major types of non-management jobs in the Bell System: (1) craft workers in the Plant Department; (2) clerical workers in the Plant and Accounting Departments; (3) Operators in the Traffic Department; and (4) Service Representatives in the Commercial Department.

Operator is the lowest paying major job in the Bell System, closely followed by the clerical positions. Service Representatives are moderately well paid, but the highest paying non-management jobs are craft jobs in the Plant Department.

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In fact, craft wages exceed the pay of many first level management jobs.

The Operator's job is the least desirable major job in the System, largely because of the extremely undesirable working conditions. Consequently, turnover rates among Operators are quite high.

Virtually all of the 200,000 persons hired each year possess little or no skills and are completely trained within the System. The high turnover significantly magnifies recruiting and training costs.

Nearly one-fourth of all Bell employees are classified as management. A very large share of these are in the Plant Department.

Management personnel for third level and above in all departments are drawn primarily from craft employees or from college graduates hired into the IMDP program. Other college graduates are hired into first level management jobs.

Each of these factors has relevance to the employment opportunities of women and minorities in the Bell System. How each of them affects those opportunities is the subject of the

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following chapters.

CHAPTER 2.-WOMEN IN THE BELL SYSTEM: A STUDY IN SEX SEGREGATION

Introduction

Not only is the Bell System the nation's largest private employer, it is far and away the largest employer of women. Females, moreover, are employed in the Bell System at a much greater rate than industry in general. It has become a cliche that the telephone company is "a good place" for a young girl to get a job.

In this chapter we will see the total sex segregation of the telephone company jobs and the resulting lower pay, poor working conditions, and fewer opportunities afforded to females. The next chapter will elaborate on the company policies and rationalizations which have produced and continue to perpetuate this sexist structure.

In 1963, when AT&T Vice President Walter Straley spoke of the Bell System's "unique competence to play a leading role in the improvement of employment opportunity," he referred, myoptically, only to "disadvantaged minorities." If such a unique

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competence did in fact exist, it ought to apply with even greater force to women. But in 1971 it must be said that the System has failed to meet the challenge; the Bell companies must be characterized as uniquely competent. Although women continue to be employed in very large numbers, they are confined to the most stifling and repetitive jobs. Their compensation is so meager as to make them doubt their own self worth. Their prospects for promotion are in the distant future, if at all. It is little wonder, therefore, that many women flee from telephone jobs almost as quickly as they are attracted to them.

Emma Nutt to the Present - Not a very long way

The infant Bell companies, like most of their contemporaries in the 19th century, employed only males. Male operators, however, were considered to be "noisy, boisterous and often rude to subscribers." As a bold experiment, the Telephone Dispatch Company (the predecessor of New England Tel.) employed Emma Nutt as the first female Operator in September, 1878.

The experiment proved to be quite a "success." Women very quickly took over the Operator's job and began to expand their areas of interest into what were then considered strictly

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male jobs. Female secretaries were employed "because girls would work for a third of the going $30-a-week salary for a male secretary." Ms. Nutt, having pioneered in the Operator's job, set the pace for telephone women by advancing to Chief Operator , the first supervisory job for women, in 1883, and retiring after 33 years of service.

The number of female employees grew with the rapid expansion of the telephone industry in the 20th century. They were limited, however, to a narrow spectrum of positions in the male dominated world of work. The jobs available to women remained those which were opened experimentally over 90 years ago. Operator and clerical jobs, together with their immediate supervisiors, came to be reserved exclusively for females. Whole sections of the Bell System became the women's domain, "where men are managers, customers or husbands." By 1971 more than 400,000 women worked in the Bell System, thus constituting more than half of all operating company employees.

The Segregation of Jobs

By way of introduction to sex segregation in the Bell System, it is instructive to examine the myriad of official

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company documents which deal with employment and employees. A total sex segregation of jobs is reflected in virtually all such Bell System documents. Through pictures of males or females, pronoun reference or through straight-forward identification, all jobs are strictly classified as either male or female.

This sex denotation of jobs is carried consistently throughout company personnel manuals, collective bargaining agreements, job descriptions, company publications, general advertisements, requisitions for employees, forms relating to employment, memoranda and letters, speeches, bill inserts, turnover studies, testing studies, orientation materials, interviewer's aids, training manuals, community wage studies, award programs, annual reports, and even reports on affirmative action efforts to improve employment of minorities.

These documents unequivocally identify the following jobs as female: Operator, Plant and Accounting Department clerical jobs, Service Representative, inside sales jobs in the Commercial and Marketing Departments, and first level management jobs in the Traffic and Commercial Departments. Craft jobs,

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outside sales jobs, and middle and upper level management jobs are always identified as male jobs.

Public image. The rigid differentiation between the sexes in employment at Bell has become a trade mark of the System. The Operator's job in particular has come to be recognized by almost everyone as especially suited to women. The telephone company has been described in the press as "the great historical bastion of feminine employment" and the Operator's job as "a female stronghold" of long standing. A newspaper article in February, 1971, reported that, "The idea that Telephone Operators are - must be - women is firmly planted into the public mind." Similarly, the public conceives of all craft workers and all managers as being male. The public's close identification of females with Operators and males with craft workers and management is no accident. It is the direct result of a calculated Systemwide sex segregation.

Only when one sex is totally unavailable for work has Bell resorted to "opposite sex" employment. During World War II women replaced men on most inside craft jobs, particularly Frameman. During strikes and service emergencies men have staffed the Operator's switchboards. These instances were certainly the

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exceptions, however, and as soon as the crisis had passed, the "normal" sex again took over the job.

A Uniform Picture

Perhaps the most striking feature of the Bell System's sex segregation is its absolute uniformity. All the operating companies are apparently subject to an immutable law of sex segregation in almost all jobs. The same jobs are allocated to the same sex in every company with the same result - women are consistently locked into the lowest paying jobs with practically no prospect for upward mobility, regardless of their skill or ambition. Every city, irrespective of its size or geographical location, reflects the same segregation. Minor variations only serve to highlight the pervasive pattern throughout the Bell System.

This consistency is most apparent in the degree to which the major jobs are sex segregated in the operating companies. For the purposes of this report, any major job (a job employing 20 or more persons) that is 90% one sex or the other will be considered to be sexually identifiable and segregated. In the 30 SMSA's, 92.4% of all employees, in major job classifications are in sex-segregated jobs. (See Table 4.) There are no cities

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which may be categorized as "good" on this index. In New York City, the city with the least segregation, 86.0% of all employees are in classifications in which one sex is 90% predominant. An even more distressing statistic is the fact that in the 30 SMSA's, 54% of all employees in major job classifications are in 100% sex-segregated jobs. In seven of the 30 SMSA's all of the 25 largest jobs are readily identifiable as belonging to one sex or the other. At least 21 of the 25 largest jobs are segregated in every one of the SMSA's.

TABLE 4.—SEX SEGREGATION OF JOBS WITH 25 OR MORE EMPLOYEES, BY SMSA, DEC. 31, 1979

Standard metropolitan statistical area	Percent of all employees in 100-percent sex segregated jobs	Percent of all employees in 90-percent sex segregated jobs
Atlanta	79.8	92.7
Baltimore	61.9	95.3
Birmingham	91.7	92.7
Chicago	36.9	89.0
Cleveland	57.3	95.9
Dallas	81.0	99.2
Denver	58.6	94.4
Detroit	75.1	97.7
El Paso	96.0	100.0
Greensboro	97.7	97.7
Houston	83.1	97.9
Indianapolis	79.4	95.3
Jacksonville	83.6	96.3
Kansas City	87.1	97.3
Los Angeles	27.3	91.7
Memphis	82.2	93.9
Miami	77.0	92.2
Mobile	100.0	100.0
New Orleans	95.2	96.6
New York	33.6	89.7
Newark	74.6	89.7
Norfolk	91.4	100.0
Philadelphia	84.2	95.0
Phoenix	73.9	95.3
Richmond	50.5	91.8
St. Louis	77.1	95.3
San Antonio	96.3	100.0
San Diego	54.1	95.0
San Francisco	37.9	92.5
Washington	58.4	92.9
Total (30 SMSA's)	53.9	92.4

Source: EEOC C-661—EEOC C-690.

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Departmental segregation. Because virtually all jobs are sex segregated, whole departments may be designated as male or female in all the companies. Almost half of all females employed in the 30 SMSA's are in the Traffic Department while less than two percent of all males are assigned to that Department. The Traffic Department has been appropriately described by Bell officials as a "nunnery." In contrast, three-fourths of all males are employed in the Plant Department, but only one-eighth of all females. (See Chart 4.) Graphic and statistical presentations of the sex composition of all departments for each of the 30 SMSA's have been prepared and can be found in Exhibit 1, pp.4-64. Those data very clearly show the sex-segregated nature of all major departments in every location.

The concentration of females in Traffic and males in Plant has two immediate implications. First, because the wages in the Plant Department are much higher than in the Traffic Department, males make more money. Second, the opportunities for promotion within non-management into management and within management are infinitely better in Plan and, therefore, for males. Later sections will quantify both the wage and promotional disadvantage

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suffered by women in the Bell System. First, however, a detailed examination will be made of the specific jobs which are segregated.

The Major Female Non-Management Jobs

Nationwide, eight out of ten female employees are in three major groups of jobs: Operator (40% of all female employees), Service Representative (8% of all female employees), and clerical and stenographic (32% of all female employees). For almost a century the Bell companies have considered these jobs to be reserved for females.

Operator. At the end of 1970, the operating companies employed over 165,000 Operators, but only 224 (0.1%) were male. Were it not for the token effort of Pacific Tel. there would be almost none. Twelve companies have no male Operators.

Service Representative. Bell's recruitment literature says of the Service Representative, "She is the telephone Company." This is a particularly apt description since 99% of all Service Representatives are females. Five companies have no male Service Representatives. In only two companies and four of the surveyed SMSA's does the percentage of male Service Representatives exceed

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on percent. (See EECC Exhibit 1, pp.447, 448.)

Clerical. The third major "female" job group is clerical. In the operating companies 93% of these low paying jobs are held by women. Although seven percent of these jobs are held by men, it should not be assumed that these are the same clerical jobs held by females. Consistent with the over all pattern, most companies reserve a certain few clerical jobs - Utility Clerk, Construction Clerk, etc. - for males. These classifications are usually paid more than "female" clerical jobs. In every SMSA almost all clerical jobs continue to be identifiable as "women's" jobs.

Inside sales. A fourth "female" job group, somewhat smaller than the three discussed above, illustrates the Bell System's segregation of even functionally-related jobs. As observed in Chapter 1, there are two basic categories of sales jobs - inside sales which handles smaller equipment and advertising orders and outside sales which contracts for major customer purchases. Despite the functional relationship between the jobs, they continue to be distinguishable by the sex of the incumbents. Of 1369 inside sales workers in the 30 SMSA's, 95.2% are females; of 4000 outside sales workers, only 8.1% are females. (See EEOC

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Exhibit 1, p.451.) In 1971 Southwestern Bell continues to designate its inside sales workers "Telephone Saleswomen."

In short, in 1971 almost every major low-paying job in the Bell System is a "female" job. The introductory description of low-paying jobs (Operator, clerical jobs in Plant and Accounting, Service Representative and inside sales jobs) is also a perfect description of jobs which are almost totally female. The fact that exactly the same jobs are female in city after city and company after company is obviously the result of System policy. The fact that these jobs are also the lowest paying jobs everywhere in the System is also no accident. The contrary situation exists, of course, with respect to the jobs which the Bell System has allocated to males. The jobs are discussed below.

The Major Male Non-Management Jobs

One-fourth of the operating company employees are in telephone craft positions. Except for the upper level management jobs, these classifications are the most desirable in the System. Not only is the pay a great deal higher and the opportunity for promotion much greater, the job itself is much more challenging and satisfying than the Operator and clerical jobs.

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These more attractive craft jobs have never been open to females on the same basis as males. Prior to the effective date of Title VII of the Civil Rights Act of 1964, there were virtually no females in any of the telephone crafts. In 1966 only three companies (New England Tel., Ohio Bell and Michigan Bell) employed any females in craft jobs.

The passage of Title VII has not, however, been a significant spur to the utilization of females in the telephone crafts. In 1971, although all the companies had at least one female craft worker, in only five companies did the proportion of female craft workers exceed one percent.

Two observations make this gross under-utilization particularly distressing. First, it should be recalled that since the Bell System trains for every job, the absence of female craft workers cannot possibly be explained by the lack of "qualified applicants."

Second, each Bell company employed females in craft jobs at a rate far below that of other companies in its area. (See Chart 5.) In 1971, only Michigan Bell managed to employ female craft workers at a rate greater than area employers. In most of the operating companies, females are employed in the

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crafts at a rate only 10-15% of the area all-industries rate.

Of 190,000 telephone craft workers in the operating companies at the end of 1970, 99% were male. The "outside" crafts (Linemen, Installer-Repairman, PBX Installer-Repairman and Cable Splicer) were virtually 100% male. In the 30 surveyed SMSA's there were only nine females in outside crafts (three Repairmen, one Installer-Repairman, one Transmission Man, one Installer, two Station Installers and one Cable Splicer). (See EEOC Exhibit 1, p. 450.)

The Bell System's employment of women in the "inside" crafts (Frameman, Switchman and Test Deskman) is hardly better; all are substantially sex segregated. (See EEOC Exhibit 1, pp.449-450.)

Michigan Frameworkers. The Frameman classification is a particularly interesting case study of the Bell System's penchant for classifying every job by sex. Prior to 1965 only one company, Michigan Bell, employed women in Framework. At Michigan Bell this classification, titled Switchroom Helper, was totally female and had been so for at least 20 years. The job was treated in every respect as a "female" clerical-type job. The "female"

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(clerical) test battery was administered to applicant; applicants were required to be between 5'3" and 5'10" tall; the rate of pay was within the clerical range rather than the craft range; promotional opportunities were into lateral clerical jobs rather than to higher-rated crafts or management. The Switchroom Helper's job, though craft in function and identical to the all-male Frameman's job in other companies, was typed in every way as a female classification by Michigan Bell.

After 1965, some companies (though by no means all) realized that females could no longer be excluded from Frameman's job. (See the discussion of BFOQ in Chapter 3.) Southern Bell and South Central Bell, to a limited extent, began what amounts to a conversion of a "male" job into a "female" job.

By the end of 1970, over 60% of the Framemen in Atlanta, Birmingham and Greensboro/Winston-Salem were "Framedames." The evidence also tends to show that the rate of pay for Framework relative to other crafts also began to reflect its "female" designation in these companies.

In January, 1970, Illinois Bell gave serious consideration to "an all female Frame force similar to Michigan Bell."

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They concluded, however, that their "hiring problems [among males] were not so critical that they should break toward an all female Frame force." Illinois Bell observed, nevertheless, that, "The Michigan people do still believe this is the way to go."

Most other companies, despite the examples in Michigan Bell and Southern Bell, continued to defend the male craft fortress. At the end of 1970, there were no female Framemen in six SMSA's, and less than five percent of all Framemen were female in eight other SMSA's. Despite the fact that Framemen in some cities were all female, only 12% of all Framemen in the 30 SMSA's were female.

The other major inside craft jobs continue to be exclusively male with little indication of any female participation to date. The Switchman classification was only 0.6% female at the end of 1970. Eleven of the 30 SMSA's had no female Switchmen. Females were similarly excluded from the Test Deskman's position, comprising only 1.7% of all employees in that position. In New York, for instance, of 1600 Deskmen, none were female.

In summary, on December 31, 1970, virtually all craft

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jobs in the Bell System were held by males. Outside craft positions were exclusively male. Females had entered only one inside craft job, Framemen, and that only very selectively. As noted before, males held 92% of the outside sales jobs.

Thus, the description of the sex composition of major Bell System non-management jobs comes full circle. All low-paying, high-turnover, dead-end jobs are female. High-paying, desirable jobs with substantial chances for promotion to middle and upper management are male. It is no surprise, therefore, to find very few females in management jobs above the first level. The following section describes this exclusion from management.

Females and Males in Management

The exclusion of females from Plant craft positions and their concentration in the Traffic Operator's jobs has serious implications for their respective opportunities for promotion into management. As shown above, the chance for promotion into management within the Plant Department is twice as great as the chance for promotion to management in the Traffic Department. In the operating companies a woman's chances of reaching management are approximately one in eight while a man's chances are one in

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three. (See Chart 6.) The chances for a male to reach management are thus consistently two or three times the changes for a female.

Even these statistics, however, exaggerate a female's potential for achieving positions of responsibility and commensurate compensation. Of all male managers in the 30 SMSA's, 45% are in management level two or above; a meager 6.3% of all female managers have progressed above the initial plateau of management. (See Chart 7.) Even fewer females make it to the highest levels. Of 2650 employees above third level management in the 30 SMSA's, only 31 (1.2%) were female.

Most staggering are the departmental management figures. It has already been observed that most middle and upper level Bell System managers in all departments are either promoted up from craft jobs in the Plant Department or hired directly into management through the IMDP. Chart 7 records the effect of this Bell System policy on the changes of women being promoted to middle management. It is almost inconceivable that in the 30 SMSA's, 99.6% of all non-management employees in Traffic are females, 92.4% of all first level managers in Traffic are females,

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but only 25.3% of all managers in levels two through five are female. Equally staggering disparities exist in the Commercial and Accounting Departments. It is now clear that in Traffic, Commercial, and Accounting, "men are managers, customers, or husbands." Females fill virtually all low-level jobs but are shut out of management jobs above the first level. For women, the Bell System's fabled "up from the ranks" promotion policy is the height of hypocrisy.

Even the law has not been a significant stimulus to promotion of women within management levels at the Bell System. After examining the distribution of women in management levels for the period between 1966 and 1969, AT&T's task force on women concluded in August, 1970, that,

Movement during this four year period has been quite slow; for all practical purposes, the only change has been a slight increase in second level jobs held by women.

Staff roles. Moreover, within management levels, females find themselves confined to staff positions and not in the mainstream of management. For instance, 9.1% of all females in management (as defined by the operating companies) are classified as Secretaries, a position that would not be considered

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management in almost any other context.

Those females in more traditional management jobs are still confined to advisory, support positions. Of the 31 females above District level in the surveyed cities, only three are located in the operating departments. The others fill legal, medical or other specialized support roles. This same finding was emphasized in the report of the AT&T task force on women.

Only a few of the District and above women managers are functioning in line management jobs. The job titles of the vast majority of these managers, regardless of department, indicate either a specilist assignment or a staff role. The few women that do progress in management, do not move into the general management mainstream.

The Bell System's failure to promote females must be classed as one of the most monumental inequities in private industry. Even so, AT&T Chairman of the Board, H.I. Romnes, on December 11, 1970, labelling as "outrageous" the EEOC's charges of "pervasive, system-wide" discrimination against women, stated that the Bell System "recruits, hires, assigns and promotes without discrimination." Romnes reported that females make up 33.5% of the System's managers and professionals. The hollowness of

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these statements is self-evident.

Female and Male Wages

Although by 1971 all the operating companies had ceased to officially label wage schdles as male or female, the total segregation of jobs had the same inevitable effect. This is not a case of unequal pay for equal work. Females are paid less because they are excluded from all jobs classified at a higher wage.

In the 30 SMSA's, 80% of all female employees are in classificationswhose maximum basic annual wage is less than $7,000; only four percent of all males are in such classifications. (See Chart 8.)

At the more lucrative end of the scale the differences are equally disparate. While 34% of all males are in classifications with a maximum annual salary of at least $13,000, only three percent of all females are so situated. The chance that a female will earn over $13,000 per year is less than one-tenth that of her male counterpart.

Furthermore, males begin at higher wages than females and continue to maintain a greater wage throughout their tenure in the Bell System. The average maximum wage for males in entry level jobs in the 30 SMSA's was $8,613; the average maximum wage

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for beginning females was $6,114 or only 71% of the male wage. A female in first level management averages $11,194. Should she compare herself to a male in first level management, she would discover that her wage is only 79% of his. When measured in terms of total "occupational position," females wages were only 75% of the average wage for all employees and only 60% of the average wage of male employees. Graphic displays of the male/female wage distribution and occupational position have been prepared for each SMSA and can be found in EEOC Exhibit 1, pp. 128-188 and pp. 238-299.

By any standard, the exclusion of females from craft jobs and middle and upper managment positions is tragic. The psychological toll is incalculable. The toll in turnover is fantastic. The loss in wages is astronomical. The conclusion is inescapable that, in terms of providing equality of opportunity for females, the Bell System has been uniquely incompetent.

Summary

While the majority of the employees in the Bell System are female, almost all jobs in the company are sex segregated.

The Bell System originated and encourages the common

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conception of certain jobs as male or female.

The sex segregation is uniform from company to company.

The Operator, Service Representative, and clerical classifications are almost exclusively female and contain 80% of all females in the System.

Nearly all craft jobs and middle and upper level management jobs are held by males.

"Male" jobs invariably pay more, are more rewarding, and provide greater promotional opportunities than "female" jobs.

TABLE 5.—SUMMARY OF FEMALE PARTICIPATION IN THE BELL SYSTEM, DEC. 31, 1970

	Total employment	Female employment	Percent female
Officials and managers	88,301	36,295	41.1
Professionals	53,756	12,051	22.5
Technicians	4,791	3,052	63.7
Sales workers	12,113	3,158	26.2
Management	5,514	841	15.2
Nonmanagement	6,239	2,507	40.2
Office and clerical	359,113	348,071	96.9
Secretaries (management)	4,929	4,919	99.8
Clerical and stenographers	141,394	131,677	93.1
Telephone operators	165,372	165,148	99.9
Supervisors/services assistants	13,448	13,437	100.0
Service representatives	33,093	32,740	98.9
Other business office employees	891	150	16.8
Craft workers	192,328	2,120	1.1
Operatives	7,437	119	1.6
Service workers	9,605	4,548	48.4
Total	732,450	408,524	55.9

Source: EEOC 10-660.

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CHAPTER 3.-REACTION TO THE SEX PROVISIONS OF TITLE VII

In 1965 Bell System officials, oblivious to sex discrimination, defined equal employment as equal opportunities for minorities. They were, therefore, rather complacent about the newly passed Civil Rights Act. Many of the companies had been members of the Plans for Progress for several years and felt that their obligations had been fulfilled. The sex provisions of Title VII, when they were considered at all, were not taken seriously and certainly were not of the same import as the race provisions. In 1965 none of the operating companies had any affirmative action commitments relating to sex, and most did not consider sex discrimination to be a serious problem. "Not much thought had been devoted to possible discrimination based on sex."

As the effective date of the Act approached, Bell officials counseled caution and adopted a "go slow" attitude. In a conference on the implications of Title VII held in April, 1965, for example, Mr. E. D. Maloney, Pacific Tel. Vice President, said.

"The Company does not want to do anything at this time which would affect the reasonable and efficient operation of our

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business. For sure, we don't intend to go off half-cocked; once we do, then we are stuck. If and when we are challenged, then we can take a different approach."

This chapter will examine the reasons offered by the operating companies for their continued exclusion of the "opposite sex" from sex-segregated jobs after the passage of the Civil Rights Act of 1964. The most common rationalizations were the use of state "protective" laws restricting women's work and claims of Bona Fide Occupational Qualification (BFOQ).

Panic to Protect Against Contamination

Certainly no affirmative action was contemplated by any of the operating companies in 1965. Many, however, realized the clear implication in Title VII that ". . . the mere fact that women [or men] have traditionally been excluded from certain jobs will not, of itself, be an acceptable reason for continued exclusion." The companies, therefore, began the process of justifying their traditional sex segregation in terms of Title VII.

Initially, the operating companies suggested a Bona Fide Occupational Qualification (BFOQ) for all jobs which were sexually segregated. Section 703(e)(1) of Title VII allows an employer to

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exclude women or men from jobs "in those certain instances" where sex is a "bona fide occupational qualification."

In December, 1965, the EEOC promulgated Guidelines on Discrimination Because of Sex which defined the BFOQ exception. According to the EEOC Guidelines, women could not be excluded from jobs because of "assumptions of the comparative employment characteristics of women in general." Nor could employers justify a BFOQ on "stereotyped characterization of the sexes," such as "men are less capable of assembling intricate equipment" or "women are less capable of aggressive salesmanship."

Some in the Bell System, however, argued that males should be excluded from clerical jobs because "the work and wage rates are not generally attractive to men" and "few men have the academic clerical training to qualify for this work." Others argued that entry craft jobs, though not justifying a BFOQ based on their job content, should be restricted to men because women could not fill higher-rated jobs in the craft progression.

Throughout the Bell System there was an underlying fear of the "contamination of male job classifications by the females." As position papers were circulated by AT&T, some of the most bizarre BFOQ claims began to be abandoned. For some classifications no

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argument could be contrived to justify continued exclusion. There were some jobs for which no company claimed a BFOQ. There were other jobs for which all companies claimed a BFOQ. And there were certain jobs for which some companies claimed a BFOQ while other companies did not.

The following sections describe the welter of conflicting positions taken within the Bell System since 1965. Only one confident generalization can be made from this material; no matter what a particular company claimed regarding BFOQ, in practice, the result was always the same. Females were consistently excluded from "male" jobs and males were excluded from "female" jobs, irrespective of whether or not the company claimed a BFOQ. The immutable law of sex segregation proved to be considerably hardier than the law of Title VII

Jobs for Which no BFOQ was Claimed: Clerical and Service Representative Jobs

As early as 1965, AT&T corporate headquarters conceded in a letter to all operating companies that there was no legitimate reason for excluding males from clerical jobs in the Plant and Accounting Departments and Service Representative jobs in the Commercial Department. An exhaustive search of company documents

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revealed that not a single company claimed that males could lawfully be excluded from either clercal or Service Representative jobs.

The absence of an official company claim of BFOQ was, however, irrelevant. The Bell System was unalterably opposed to the mingling of the sexes. A memorandum which refers specifically to clerical and Service Representative positions, exemplifies what actually occurred throughout the Bell System:

"We are not anxious to place men in jobs that are normally held by women or women in jobs normally held by men. No individual should be hired into a job normally held by the opposite sex unless approval is received."

To say that the operating companies were "not anxious" to place males in clerical and Service Representative jobs is a considerable understatement. As long ago as 1965, the System affirmatively recognized the unlawfulness of continued exclusion of males, and yet the exclusion has continued for at least six years. Data already presented conclusively showed that as of December 31, 1970, these jobs were still virtually all-female. The fact that the companies never officially even claimed a legitimate reason for excluding males from clerical and Service Representative

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jobs did not prevent the companies from excluding males in practice. These jobs were just as staunchly "female" in 1971 as the job of Operator, for which the Bell System has valiantly attempted to justify a claim of BFOQ. Under these circumstances, the conclusion, harsh though it may be, is inescapable. The Bell System has deliberately flouted the law. This conclusion is reinforced by the openness, discussed in the next chapter, with which these violations of the law were accomplished.

BFOQ for Operator: A Lost Cause Even in 1965

In 1965 there was a great debate within the Bell System over the continued segregation of the Operator classification. In California, at least one independent telephone company had begun to hire male Operators in 1966, and their limited efforts seemed to be quite successful. Many Bell operating company officials felt the Operator's job could not lawfully be limited to females.

Some Pacific Tel. officials even suggested the hiring of male Operators as an experiment in an effort to solve their turn-over problem. The following disadvantages of such a policy were expressed by other Pacific Tel. executives: (1) the Company

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already had a significant investment in the image of the Operators as the "voice with the smile" which would be lost, were males hired; (2) if males were in Operators' jobs there might be some pressure to equalize the Operator's pay with plant craft pay since men would then be serving in both positions. These observations are probably reflective of the real reasons for the Bell System's unflagging attachment to female Operators. However decisive these economic factors may have been in reality, they were never formally articulated as being lawful reasons for exclusion.

Rationale for BFOQ. Despite the early confusion over the Operator job, all operating companies toed the line after AT&T corporate headquarters circulated a position paper in January, 1966. The paper, entitled "Application of Title VII of Civil Rights Act to Traffic Operating Jobs in the Telephone Industry," awkwardly attempted to rationalize the exclusion of males. Three basic raltionales were proposed. First, the paper argued that men were by nature unsuited to the Operator's job. The initial telephone company experience with rambunctious males was cited and the specter of deteriorating service was raised. "The present high level of service," AT&T contended, "is largely due to the

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Employment of women as telephone operators."

Second, the close nature of the work necessitated a segregated work force.

Many times operators' knees, elbows, hands and arms brush their neighbors' bodies. To have men and women (even those with the best intentions and good will) working side by side under these conditions would create an intolerable situation.

The possibility of segregating men and women at the switchboards was rejected as "possibly a violation of Title VII".

Third, the Operators' chairs, switchboards, lounge and rest room facilities were designed for women, and the expense of accommodating males would be "too much for any management to consider or the public to pay for."

Thirteen of the operating companies formally adopted the AT&T rationale and officially excluded males from the Operator's job (and associated Traffic Department jobs) on the basis of a female BFOQ.= It is assumed that the remaining companies also claimed a BFOQ for Operator although such evidence was not furnished in response to the EEOC's Request for Documents. In any case, these companies also excluded males from the job.

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Fallacies of the Argument. The bankruptcy of this position is quité apparent. First, AT&T's 1966 position paper admitted that at least 25% of all males possessed the specific "nurturant" personality qualities which Bell claimed it sought in its Operators and 20% of all women are as "aggressive" as the average man.

Moreover, and this is critical, AT&T has never used any selection techniques designed to measure personality qualities. Inasmuch as at least 20% of women do not possess the personality qualities "sought" by AT&T, the failure of the System to adopt selection techniques to screen out those women vividly testifies to the make-weight nature of this argument. On the other hand if personality factors are so critical to service, the failure of the Bell System to adopt professionally developed selection techniques designed to measure personality factors stands as a monumental example of corporate mismanagement, especially in view of the well-known and wide-spread deterioration of service in recent years.

In any event, AT&T obviously cannot simultaneously claim that personality factors are so important as to justify

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exclusion of all males from the Operator job and yet so insignificant that the System need not use selection techniques to measure those qualities.

The second argument advanced by AT&T - that the close nature of the work justified complete segregation - is so specious as to warrant summary rejection. Moreover, it has been reasonably surmised by Bell officials that the extremely acute problems of turnover could be substantially reduced by sexually integrating the Traffic Department nunnery. Further, the notorious claustrophobic conditions in the Traffic Department have been repeatedly condemned as being a major factor contributing to Operator unrest.

Another major fallacy in Bell's argument for exclusion of males from the Operator job can be found in the experience of other telephone companies. General Telephone Company, for example, had been successfully hiring males as Operators since October, 1966, a fact which must have been well-known in the Bell System. Nevertheless, AT&T blindly persisted in its attempt to preserve the all-female composition of the Operator's job.

Finally, it must be emphasized that AT&T's claim of a female BFOQ for Operator was based squarely on "stereotyped

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characterizations of the sexes," a rationale explicitly rejected by the EEOC as early as December, 1965.

It is quite obvious that the Bell System made a conscious decision to retain the female image of the Operator's job and to avoid hiring males. The position which AT&T adopted was irrational and uneconomic. Because of the system's predilection for female Operators, they were forced to adopt an incredibly strained and feeble argument to achieve a semblance of legality.

Abandoning the Female BFOQ. AT&T continued in this premise long after the operating companies had realized its futility. In April, 1970, AT&T let it be known that it was still opposed to the hiring of male Operators but that the decision should be made by the individual operating company presidents. All of the companies, with some reluctance, officially abandoned their BFOQ claims for Operators during the first six months of 1970.

There has been no change in the actual composition of the Operator's classification following the revocation of the ban on males. Although thousands upon thousands of Operators have been hired since the change in policy, as of December 31, 1970, in the entire Bell System there were only 224 male Operators, 90%

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of whom were in California. Twelve Bell companies still had no males at all.

No Company has taken any affirmative action to seek out male Operators, and most have actively discouraged such applicants. South Central Bell's accommodation to the new mandatory policy in April, 1970, is perhaps typical.

Henceforth, it is the company's policy that the female sex should not be asserted as a BFOQ for any job. However, it is not the Company's policy to seek out or encourage the placing of males in these titles. On the contrary, diligent efforts (short of asserting a female BFOQ) should be made to dissuade males from applying for or taking these jobs. Their interest should be steered, if possible, toward Plant craft or some other more suitable work. If such males are insistent on being considered for jobs normally filled by women, they should be processed in the regular manner for males. . .

The Bell System couched sex segregation of Operators in terms of Title VII until that tactic was totally debunked. Stripped of these trappings, it became blatant discrimination.

Male BFOQ - Introduction

The concern over the "contamination" of male jobs

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elicited a much more intricate justification for male BFOQ's. The same disagreement which surrounded the formulation of female BFOQ's characgerized the attempted legitimation of "male" jobs. This confusion and contradiction only highlights the inability of any employer to make generalizations which would justify the exclusion of all females, absolutely from a particular category of jobs. The difficulties inherent in making categorical generalizations about individuals based solely on their sex was certainly recognized by many in the Bell System. Officials in some companies determined that it was "probably impossible, or at least very difficult, to make blanket restrictions" for any individual job title. But in order to rationalize the continued exclusion of females from male jobs, most companies attempted the "impossible" and concocted numerous reasons for continued sex segregation.

The Bell companies used two major arguments to justify their exclusion of females from various outside sales, craft and management jobs. First, they contended that the placement of females in jobs which required overtime of lifting of heavy weights would contravene state protective legislation. Second, they

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claimed that women as a class were unable or unwilling to meet some of the rigors associated with traditionally male jobs. As will be shown below, these distinctions have had little actual effect on the sex composition of the job. All jobs remain sex segregated whether a BFOQ was claimed or not.

Male BFOQ: Outside Sales Jobs

By letter dated May 12, 1965, AT&T Assistant Vice President William Mercer notified all operating companies that "there would appear to be no general basts for excluding women" from outsides sales jobs. At least fourteen companies apparently have never claimed a BFOQ for outside sales jobs. On December 31, 1970, the 22 SMSA's in these companies employed over 2,500 outside sales workers, of whom 92% were male. Those same SMSA's employed 444 inside sales workers, of whom 93% were female.

Five and one-half years after the effective date of the Civil Rights Act, these fourteen companies continue to sex segregate their sales jobs without even a claim of legitimacy. The remaining companies justified their exclusion of females from outside sales jobs primarily upon the existence of various state protective laws limiting the number of hours women can work.

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Claims based on such laws will be dealt with more generally below.

The implications of the System's treatment of outside salesworkers, however, are quite clear. Only a handful of companies asserted a BFOQ claim for outside sales jobs. The absence of such a claim has not, however, meant that females have been afforded equal opportunity. Sales jobs still remain sexually segregated in all companies.

Craft Jobs: State Protective Legislation

A fever of paternalism in the first half of the 20th century produced legislation in a number of states limiting the hours a woman could work and the weight that she could lift. In 1965 most of these laws remained in force. Because arguably certain craft jobs required the working of hours and/or lifting of weight in excess of the limit permitted women under these laws, several Bell companies were faced in 1965 with a potential conflict between the state protective law and the federal Civil Rights Act, a conflict which was immediately recognized by all in the Bell System.

Pacific Tel., in particular, raised the possibility that the state laws might be challenged by the federal government

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as restrictive of females' employment opportunities.

Before discussing BFOQ claims based on these state laws, it should be emphasized that not all companies could rely on such laws as justification for their traditional exclusion of females from craft jobs (or outside sales jobs, for that matter), either because their respective states had no protective legislation or such legislation did not apply to the telephone company. Eight companies - C&P (Md.), C&P (Va.), Indiana Bell, New Jersey Bell, C&P (W.Va.), Southwestern Bell, New York Tele., and Northwestern Bell - have never claimed that their exclusion of females from craft jobs could be excused because of state protective legislation. The rationalizations these companies adopted will be discussed in the next section.

Twelve companies, however, did assert a BFOQ for some craft jobs based on state protective legislation. These claims were not uniform, and the inconsistencies are sufficient to cast considerate doubt about the companies' good faith in asserting them.

Challenging state laws. There were four major reactions to the apparent conflict between state and federal law. First, Mountain Bell and Illinois Bell made a frontal attack on

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the state law's validity, but only after they had been found in violation of either state or federal civil rights laws.

In December, 1966, Mountain Bell challenged the Arizona protective law as "archaic" and in conflict with state and federal anti-discrimination laws. In June, 1968, the offending Arizona statute was revised to eliminate the conflict with Title VII. Similar laws existed in Utah, Montana, New Mexico and Texas, but the Company made no effort to have them removed by the courts. Quite to the contrary, Mountain Bell continued to assert a BFOQ based on these "archaic" laws until March 1971. Moreover, despite the absence of any state protective law in Arizona since 1968, Mountain Bell in Phoenix has continued to sex segregate the carft jobs. On December 31, 1970, in Phoenix, the Company employed 1405 telephone craft workers, of whom only 21 (1.5%) were female.

In March, 1970 (almost five years after the effective date of Title VII) Illinois Bell also challenged the state's protective laws in federal court, contending that they were neither realistic nor relevant to the needs of women in modern society. The court ruled the state law invalid in August, 1970. No other Bell companies have made such challenges of state laws.

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Exemptions from state law. A second alternative was pursued by Bell of Pa., which sought exemptions from the state law for the classifications of Facilities Assigner and Frameman. The exemption was granted by the Pennsylvania Bureau of Labor Standards in March, 1968, for all jobs in Philadelphia and not just those for which exemption was sought. Unaccountably, the Company continued to rely on the state law. Even though they had a legal exemption, they continued to exclude women from other inside and outside crafts until January, 1970.

Similar exemptions were allowed in other states, but they were not applied for by the Bell companies. Not that exemptions would make much difference. Although unrestricted in its ability to employ females as craft workers, Bell of Pa. employed 4418 craft workers in Philadelphia on December 31, 1970 only 11 (.02%) were female. Clearly, the state protective law has not been the operative factor in excluding females from craft work at Bell of Pa.

Restriction of overtime. A third major policy toward state protective laws was adopted by Southwestern Bell, Pacific Tel. (Frameman only) Ohio Bell (Frameman only) and Wisconsin Tel. These companies allowed women into certain craft positions

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but restricted their overtime. Wisconsin Tel. presents a particularly compelling example. After initially excluding women from all craft jobs on the basis of the state law, the Company revised its position in 1968 to "allow" women into these jobs but to restrict the overtime they could work. The effect of this change in policy has been negligible. On December 31, 1970, Wisconsin Tel. employed 2864 craft workers, of whom 99.4% were male.

Southwestern Bell adopted a similar position relative to the Texas state protective laws. They restricted no jobs to men based on the state statute but limited females' overtime when they held those jobs. Based on the same statutes, however, Mountain Bell in El Paso restricted all inside craft jobs to males. These conflicting policies illustrate the contrived and artificial nature of claims of BFOQ based on state protective laws. Further demonstration of the absurdity of BFOQ claims can be found by examining the employment of female craft workers in Texas, where, as noted above, Southwestern Bell states it has never denied females entry into craft jobs based on the state protective law but has restricted only the hours women could work.

Of 4813 craft workers employed in Dallas, Houston and

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San Antonio on December 31, 1970, 98.5% were males. Whether or not Southwestern Bell claimed a BFOQ based on Texas state law, the fact remains that craft jobs are the exclusive domain of men.

The following companies spurned all of the above alternatives and excluded women from most traditionally male classifications based on state protective legislation: C&P (D.C.), Michigan Bell; New England Tel., Pacific Northwest Bell, and South Central Bell.

A summary of the various companies' policies concerning exclusion of females from craft jobs based on state protective laws is obviously difficult since so many inconsistent claims were being made within the System. Two conclusions can be reached with some confidence, however. First, if the operating companies had truly desired to place females in craft jobs, they could have. The companies could have attacked the state law; they could have sought exemptions from the laws; or they could have placed women in the jobs but restricted their overtime. All of these alternatives are viable as indicated by the fact that some companies claimed to use them. It appears reasonable to conclude that the failure of most companies to pursue these

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alternatives vigorously can be attributed to their continued desire to sex segregate craft jobs.

This observation is reinforced by the second conclusion which can be confidently made. The fact the some companies attacked state laws, obtained exemptions, or "allowed" females into craft jobs but restricted their overtime made virtually no difference in actual practices. All companies continued to exclude females from craft positions. Bell System sex stereotypes, ingrained by a century of corporate policy, continued to thrive.

Craft Jobs: Sex Stereotypes

The second major justification for a male BFOQ rested on presumed differences between the abilities and disabilities of the sexes. Five liabilities were attributed to women which would prevent them from holding "male" jobs: (1) women who work on customer premises are subject to special hazards unique to their sex; (2) women may not work under hazardous conditions inherent in working aloft or underground; (3) women may not lift excessive weight or expend an equivalent amount of energy (4) because women cannot participate in (4) because women cannot participate in the above activities, they may not hold jobs which

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require such experience; (5) women would not be expected to complete the training period required for certain jobs.

It should be recalled that as early as 1965 some companies openly acknowledged that it was probably impossible, or at least very difficult, to make blanket restrictions for any particular job or classes of jobs and the EEOC had specifically rejected the use of such stereotypes. In fact in 1965 AT&T conceded in a letter to all operating companies that there was no legitimate reason for excluding women from any inside craft job.

Nevertheless, many companies claimed a male BFOQ for inside craft jobs based on one or another of the reasons listed above. The EEOC has consistently opposed such BFOQ designations in its decisions. Eleven times since 1967 the Commission has rejected a BFOQ claim for Frameman or Switchman. In the leading judicial interpretation of BFOQ, the Court of Appeals for the Fifth Circuit rejected Southern Bell's claim of BFOQ for Switchman. These decisions have been largely ignored.

The injustice of the Bell position was articulated by Southern Bell's only female Switchman in South Carolina in December, 1970.

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"I think everybody felt that [women] couldn't do the job because of the way they hold their screwdriver or something. No one wants to be prejudged and have someone say you can't do it because you're a woman or because you're black or something."

Yet that is precisely what the Bell System has uniformly done since 1965. They have asserted that all or substantially all women could not lift a particular weight or would not stay on the job long enough to justify training or would not be able to work safely in hazardous situations while all males could or would do these things.

Fallacy of the argument. The fallaciousness of this argument is apparent and, indeed, the operating companies have recognized it since 1965. In 1966, Mountain Bell acknowledged that employment decisions could not be made "on the basis of assumptions of the comparative employment characteristics of women in general or stereotyped characteristics of the sexes. . . " Yet the Company claimed a BFOQ until March, 1971, for all jobs which require the lifting of "substantial weight or equivalent expenditure of energy."

In February, 1966, a New Jersey Bell memorandum was even more accurate in its interpretation of Title VII:

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"Individuals must be considered on the basis of individual capapcities and not on the basis of any characteristics generally attributed to a group such as men not being able to assemble intricate equipment or women not being able to lift heavy weights."

Despite this realization, New Jersey Bell asserted a BFOQ for outside craft and building and motor vehicle classifications until 1971.

AT&T Vice President William C. Mercer reached an obvious conclusion in January, 1971, when he observed that -

"There are no real differences between women and men, other than those enforced by culture. I can't speak for all of society, but in business - and very importantly to me in the Telephone Company - we believe this to be true."

The Effect of BFOQ Claims

The Bell System's BFOQ claims over the last five years have been a sham; not only have they been tortured, contrived and contradictory, but they have had no substantial effect on the sex composition of jobs in the operating companies. They have served as a legal rationalization for the exclusionary

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policies that the Bell System has practiced for a century. Whether a BFOQ was claimed or not, most jobs have remained sex segregated.

A few examples betray the hypocricy of the Bell System's BFOQ assertions. In 1965 all the operating companies agreed that the Service Representative job did "not require close enough contact to qualify for . . . a BFOQ." Yet in 1971 this classification remains almost totally female, no more integrated than the Operator classification which the companies staunchly defended as inexorably female.

It makes no difference that a company claimed a BFOQ on the basis of state protective legislation. Mountain Bell, for instance, limited craft jobs in El Paso to males in conformity with state protective laws. Southwestern Bell made no such claim for its San Antonio craft workers. Yet in 1971 only 4% of the Framemen in El Paso were female, and none were female in San Antonio; there were no female Switchmen, Deskmen, or outside craft workers in either SMSA.

Companies that claimed no restrictive state protective laws in their operating areas (Indiana Bell, New Jersey Bell,

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New York Tel., Northwestern Bell and Southwestern Bell) nevertheless asserted a BFOQ for most craft jobs. State protective laws were a convenient peg on which the companies could hang their continued exclusion. They were not a necessary peg.

New Jersey Bell presents a particularly dramatic case of exclusion without regard to BFOQ claims. In 1965 the Company made three admirable decisions. First, it determined that there were no state protective laws applicable to the Company's female employees. Second, it recognized that under the law females must be judged on an individual performance basis. Third, it specifically denied the applicability of the BFOQ exceptions to the classification of Frameman or Switchman. The Company's action, however, belied its commitments. Of 206 Framemen and 477 Switchmen in Newark in 1971, none were female.

Such a pattern is typical of the Bell System. Though New York Tel. abandoned its BFOQ claims for Frameman in 1966, less than 1 percent of their Framen were female in 1971. Similarly, Pacific Tel. dropped the legal trappings of its requirement that Framemen be male in 1967, but no females were employed until 1969, and less than 6 percent of all Framemen were female in 1971. Ohio Bell removed its restrictions on placing females in

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the job of Framemen in February, 1969. Two years later, only 2 percent of the Framemen in Cleveland were women.

Finally, although only two companies dared to claim that their Initial Management Development Program (IMDP) should be exclusively male based on a BFOQ, all operating companies actually sex segregated their college graduate management training programs until at least 1970.

Since the presence or absence of a BFOQ claim has made little diffrence in terms of job integration, there was scant cause for rejoicing when all the companies dropped these daims en masse during the first six months of 1970. As pointed out above, the new position was accepted by most companies under duress, and there was no intention to embark on "affirmative action." "Diligent efforts" were to be made to preserve the sex-segregated status quo. The Bell System's 1965 position with regard to sex discrimination remained essentially unchanged. The companies had been stripped of their legal crutch, but they retained the underpinnings of a sexist system.

Summary

No BFOQ was ever claimed for clerical and Service

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Representative jobs, but they were still "female" jobs in 1971.

Early and awkward attempts (later abandoned) were made to claim a BFOQ for the Operator's job which remained 99 percent female in 1971.

Some companies claimed a BFOQ for outside sales jobs and some did not. All companies employed almost all males in these jobs in 1971.

Some companies claimed a BFOQ for some craft jobs based on state protective legislation. Some challenged the state laws. Some requested exemptions from the law in some areas but not in others and some restricted women's overtime hours while ostensivly allowing women into craft jobs. Some companies did none of these. In no company, however did women hold any significant number of craft jobs in 1971.

Some companies simply argued, among other things, that women could not lift heavy weights or work in hazardous areas. Whether or not such arguments were made, no company employed female craft workers in substantial numbers.

In sum, whever the rationalizations might be - whether or not rationalizations were offered at all - there were no

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real differences among the companies in the sex composition of the jobs in the Bell System. All were just about as segregated in 1971 as they were in 1965.

CHAPTER 4. -THE SEXIST SYSTEM

The previous chapters have graphically demonstrated the extensive sex segregation of the Bell System. Virtually all jobs, from Janitress and Janitor to Saleswoman and Salesman to Chief Operator and Traffic Manager, have a distinctly female or male cast. It is preposterous to think that these distinctions between males and females could have occurred by chance. The disparities are so egregious and the corporate explanations are so feeble and contradictory that the segregation of males and females must be ascribed to a deliberately exist policy. This chapter will analyze those deliberate policies of recruitment, hiring and promotion which have created and perpetuate this total sex segregation.

Recruitment Methods

The Bell System has a staggering need for applicants. Because of the incredible turnover among short term employees

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(particularly Operators) and because only about one of every ten applicants is deemed suitable for Bell, the applicant flow must exceed two million each year in order to supply the 200,000 new hires needed. The pressure to recruit from every available source is, therefore, intense.

Bell traditionally maintained dual recruitment systems for females and males and saw no reason to change following the passage of Title VII. In October, 1965, a Bell of Pa. Assistant Vice President said:

"For jobs in which males have heretofore been predominant, we will continue to seek males primarily, but we will consider qualified females except where there is a BFOQ. For jobs in which females have heretofore been predominant, we will continue to seek females but qualified males will be considered except where there is a BFOQ."

The same recruitment methods which produced segregation were, according to Bell's reasoning, sufficient even after such segregation was made unlawful. Systemwide, the primary recruitment techniques for non-management employees in 1965 and 1971 were (1) referrals from current employees, (2) formalized high school

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recruiting and (3) classified advertisements. Within Bell's current employment context, these methods will inevitably produce a sex-segregated applicant flow.

Employee referral. Employee recruitment has for some years been Bell's preferred method of attracting new employees. The operating companies continually extol their employee recruiting programs, apparently oblivious to its malign effects. In 1969 Bell of Pa. said:

"We put thumbs down on the old 'opposites attract' theory. We're pretty well convinced telephone people take to people like themselves. That's why employee recruiting just has to be the best way to get prospects."

According to an AT&T recruiting manual, "Employees, perhaps unknowingly, do a preliminary screening job because they tend to refer applicants much like themselves."

This method of recruitment has produced a disproportionate share of new hires. In 1971 Pacific Tel. found that -

"We hire one out of every seven employee referred applicants. Of applicants from other sources we hire only about one out of 12. Friends and relatives of employees are often the best qualified applicants and are usually good employees. <u>They</u>

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know what to expect, and were sold on the Company before they appeared in Employment."

This presumed advantage is the operative factor in its discriminating effect. A Northwestern Bell personnel manual unconsciously identified the sinister nature of employee recruiting:

"Recruiting through employees is one of our best sources of desirable applicants. Our employees are already familiar with many of the advantages of working for our Company. They know something about the various kinds of work and jobs that might be available and they frequently are acquainted with people who can qualify for these jobs and who are interested in working for us."

The implication is only too apparent. Females, traditionally confined to "female" jobs, will have limited familiarity with "male" jobs. They will be unaware of vacancies in craft jobs and will be able to offer no encouragement to their female friends and relatives in this area. This is especially true when, as in the operating companies, employee recruiting is conducted on a departmental basis. Employee recruiting, the major Bell System recruitment technique, can have only one result. Females

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will continue to flow irto "female" jobs and males into "male" jobs.

High school recruiting. The second major recruitment method is a concentrated effort to attract graduating high school seniors. High school recruitment is particularly appropriate at Bell since almost all nonmanagement jobs require no specific skills. Most of the operating companies, therefore, maintain a close liaison with high school guidance counselors, providing them with films and handbooks describing the jobs available to their students at Bell. Virtually all of these handbooks openly describe "opportunities for young women in the telephone business" or "beginning entry jobs for men."

Dr. Judith Long Laws, Assistant Professor of Sociology and Psychology at Cornell University, has identified the regular "tendency of high school counselors to counsel women away from 'men's' fields" as one of the major "structural obstacles which a sexist society put in women's way." Bell is certainly a willing accomplice to this obstruction.

Recruiting materials. The most prodigious effort to attract high school students is through a barrage of brochures hawking telephone company jobs. Several years ago an AT&T

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Assistant Vice President warned each of the operating companies in a corporate position paper of the potential for discrimination in such publication:

"Employment literature should be reviewed to identify content that could be inferred to be in conflict with Title VII. This would include such items as recruiting booklets and other recruiting literature, vocational counselor's handbooks and employment office practices. Appropriate revisions should be made."

Pacific Northwest Bell, in consultation with AT&T officials, further determined that under Title VII employers should not "have limitations or show preference in advertising for applicants," and that, "A picture of a man or woman would be considered a show of preference."

Once again, the Bell companies maintained the status quo despite these warnings of its unlawfulness. In 1971, after ample time to make the needed revisions, all of the Bell System brochures continue to be blatantly sex segregated.

At&T can hardly claim that its corporate hands are clean. In April, 1969, they launched a nationwide campaign, including full color ads in women's magazine, to recruit Service

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Representatives. In a letter to all General Commercial Managers in the operating companies, AT&T Assistant Vice President Lee Tait described the program as follows:

"It provides an excellent vehicle for selling the Service Representative job to young women in today's tight labor market. . . . Many think that the only job opportunities for women in the telephone company are clerical or switchboard operators."

There can be no possible justification for such a disregard of the law. Pamphlets describing Operator." Service Representative and clerical positions openly follow the dictum of a C&P(Va.) personnel manual that recruitment literature should be "fresh, feminine and applicant-centered." Two major brochures ("The Modern Telephone Operator" and "But She Doesn't Look Like a Telephone Company"), prepared by AT&T and used by every operating company, are illustrative. Both picture only females as Operators and Service Representatives and both use only the feminine gender to describe these employees. "Male" brochures used in 1971 ask, "Do you have jobs for young men?" and answer resoundingly. "Yes, . . ." Of the hundreds of brochures used in

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the 30 surveyed SMSA's only one or two picture females or males in "opposite sex" jobs. Films, talks and slides used in high school recruitment parrot the same sexist theme.

Impact of sex-biased advertising. The impact of such biased advertising was demonstrated in a 1971 study conducted by Drs. Sandra and Daryl Bem in Palo Alto, California. The subject sample consisted of high school seniors, most of whom planned to seek a job upon graduation. They were given a booklet of actual and simulated recruiting advertisements and were asked to indicate their interest in applying for the jobs of Operator, Service Representative, Lineworker and Frameworker in the Bell System.

The results, presented in Chart 9, show the dramatic change for both males and females when the traditional sex designations are eliminated or reversed. Though almost no females expressed an interest in Frame or Line work while these jobs carried the male stigma, one-fourth of the women would apply for this work when recruited through neutral advertisements. One-half of the surveyed women would seek these traditionally male jobs if the sex designation of the advertisements were reversed. A similarly dramatic pattern occurred for males by simply

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eliminating the feminine connotations of the Operator and Service Representative advertisements. These findings clearly demonstrate that dual recruitment brochures for males and females create an overwhelming reluctance to seek non-traditional jobs. Such reluctance can, however, be substantially overcome if the sexual biases of the brochures are eliminated or reversed.

Classified Advertisements. The third major recruitment technique is classified advertising, used by most companies as a source of last resort since it is not as "selective" as employee or high school recruitment." Once again, AT&T realized the potential for discrimination in this form of recruitment and in 1965 advised all of the operating companies that placement of ads in help wanted-male or help wanted-female columns would be an indication of preference for one sex or the other.

Such warnings went almost totally unheeded. In May, 1965, Illinois Bell determined that -

"Advertisements for applicants will have to be sufficiently descriptive in the case of Service Representative, Frameman, clerk and certain other jobs for which no BFOQ was claimed if we are not to stimulate a large number of the

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'opposite' sex to apply."

In July of that year Illinois Bell formulated the following policy with regard to help wanted advertisements:

"The ads will be inserted under the heading 'Help Wanted-Men' or 'Help Wanted-Females' depending on which sex would generally be most interested. For example, ads for Operators, Stenographers and typists would be classified under 'Help Wanted-Women' as women generally fill these positions. Ads for sales trainees would be classified under 'Help Wanted-Men' as sales people are more commonly thought of as men."

Their circular reasoning apparently was as follows: "Since women are interested only in Operator and clerical jobs, we will attempt to interest only women in these jobs.

Economical, productive alternatives were available and were used by a few companies on a highly selective basis. For instance, Bell of Pa. placed advertisements for Service Consultants under both male and female headings in 1971. They persisted, however, to advertise for Operators and Service Representatives in the help wanted-female column and for craft jobs in the help wanted-male column. Such a callous disregard for

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alternative, nondiscriminatory forms of advertising in unconscionable.

Another study by Drs. Bem and Bem confirms the expected disparate effect of such advertisements. The placement of ads under sex-typed headings is sufficient to dissuade females for applying for male jobs and vice versa. Similarly, a Pacific Tel. study in September, 1970, discovered that recruiting for Operators in either the help wanted-male/female column or in both the male and female columns produced an applicant flow that was 50% male and 50% female.

The conclusion is inescapable. The Bell System has consciously and intentionally sought to segregate its applicant flow through its recruitment techniques. Far from taking affirmative action to reverse the traditional sex composition of jobs (nine companies have made absolutely no changes in their recruitment practices for women since 1965), they have become further entrenched in the very techniques which produced the segregation. The operating companies reliance on employee recruiting, their continued use of recruiting brochures which blatantly sex-type all jobs and the placement of advertisements

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under segregated classified headings illustrate once again their complete indifference to sex discrimination and their continued defense of the past.

Hiring

Bell's recruitment efforts and its general reputation as a large employer stimulate a steady stream of applicants. The operating companies are, however, highly selective in deciding whom they shall employ, and that process of selection is quite expensive. In 1970 Pacific Tel. hired only one in ten applicants and spent over $7.5 million in operating its employment offices.

This process, like others dealing with employment, is designed to funnel males and females into sexually "appropriate" jobs.

In 1966 New Jersey Bell described its employment procedures as follows:

"While many of our jobs have been traditionally filled by one sex or the other, this structure has been due to the unique specialties in our business and not due to conscious effort to discriminate. In the hiring programs, most male employees have been hired for craft work and the prescribed entrance

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requirements have historically measured the applicant's future potential. Similarly, most female applicants have been measured in terms of stenographic-clerical skills."

This section will show that such distinctions based on sex are the primary consideration in the hiring and placement of applicants in the Bell System. The skills or interests of the applicant are considered only within that framework. Male and female applicants follow a totally different path from the moment they enter the employment office until they are placed in a segregated job. Company disclaimers to the contrary, there is no doubt of the Bell System's conscious effort to discriminate between males and females.

The applicant. Like New Jersey Bell, all the operating companies have explained the disparate distribution of females and males in terms of the different interests of the sexes. In 1970 a New York Tel. Assistant Vice President explained the hiring process as follows:

"Many people walk into our employment offices and say 'I want to be an operator' or 'I want to be a clerk,' or 'I want to be an installer.' We take that into account because we feel

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if they are coming and asking for a job they would like, and they can do it, they should be considered."

Three factors, however, mitigate against this explanation of disparities in placement. First, Bell has predetermined the job interests of its applicants through its recruiting, as was pointed out in the preceding section. Second, "applicants often apply for any available job and are placed in the job that best meets their qualifications, aspirations and convenience." In these cases the employment office, not the applicant, determines where she or he will be placed. Third, the operating companies force all applicants into one of two stereotyped molds. For instance, a 1967 New Jersey Bell personnel guide indicates that, "In most Traffic employment bureaus, it will be taken for granted that the applicant is applying for the position of Operator." Northwestern Bell mapped the entire career of its female and male applicants as follows:

"Men will probably be interested in outside construction, in skilled inside and outside Plant occupations, truck driving, sales and so forth. Most of them will think in terms of starting long range career employment. Women will probably

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be interested principa' y in secretarial, stenographic, receptionist, clerical, switchboard operation or in-plant selling types of work. Starting long range careers will probably be secondary.

The type casting of applicants extends to one of their most important job requirements - the salary. A 1971 Southwestern Bell "School Talk" defines the interests of boys and girls as follows:

"Most of our entrance jobs that girls are normally interested in have a starting salary of $67.50 per week. The ones that boys are normally interested in start at $78.50 per week."

The Bell companies have never been overly concerned with the job interests of applicants except when they coincided with their sexual stereotypes. Males seeking Operator's jobs have had to apply repeatedly befofe they are taken seriously. The smoke screen of applicant interest is only a ruse, in the same category as the BFOQ claims for Operator.

Two universes. Until the late 1960's, the employment functions in the operating companies were decentralized. Departments often did their own hiring and set up appropriate

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hiring offices. Because of the highly segregated nature of the non-management employment in most departments, these departmental hiring offices soon became dual processing centers limited to women or men. In 1965 all the companies maintained separate hiring offices for women and men, and AT&T advised them that, "It is believed that separate employment offices for men and women could continue to operate for the present, but we cannot depend on this in the future." Any change in that procedure would, according to Pacific Tel., cause "considerable difficulty." There was a total unconcern for the difficulty and disadvantage which this policy caused for female and male applicants. Though some companies have converted to centralized employment offices in 1971 many continue to maintain two separate offices for females and males, each hiring for a different category of jobs.

Even in centralized offices, however, the processing of females and males follows divergent paths. In 1965 Pacific Tel. admitted that, "Employment office procedures are truly discriminatory at the present time. Men are tested separately from women and take a completely different battery of tests." The recognition of this unlawful practice did not, however,

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stimulate the Company to change. In March, 1969, four years later, the Department of Defense determined that Pacific Tel. had a "present practice" of processing male and female applicants through separate employment channels with separate employment criteria for each. Pacific Tel. is hardly unique. All of the companies continue routinely to process females and males in radically different ways with sex segregation the final goal.

Employment procedures. Bell's standard employment procedure is outlined in Chart 10. The applicant, either by telephone or in person, is first interviewed in a "gross pre-screen". This brief interview is intended to discourage those persons whose work requirements (salary, location, type of work) are inconsistent with the company's available jobs. No applicant who wishes to proceed, however, is rejected at this stage. The applicant is then given one or more of several batteries of tests based on the interviewer's evaluation of his or her interests and experience. If the test is completed successfully, a detailed application is filled out and an intensive interview is conducted. If the applicant's

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abilities and interests (as determined by the tests and the interview) "match" the company's job opening and the applicant passes security, reference and physical checks, a job is offered. Each of these stages may be defined in terms of gender and each contributes to the funneling of females and males into different jobs.

First, as a concomitant to segregated employment offices, the Bell System has traditionally maintained segregated interviewers, females interviewing female applicants for Operator, Service Representative and clerical jobs and males interviewing applicants for craft and management positions. Six years after the effective date of Title VII, many companies continue this practice in toto. Almost all continue to segregate management and non-management interviewers.

Testing procedures. Second, although male and female are indistinguishable in terms of age, education and experience , there are dual criteria for judging the sexes, beginning with the tests they are given. Sex is, without doubt, the most important criteria for determining which test will be administered to the applicant. The Operator, clerical and Service Representative test batteries are consistently

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referred to by Bell officials as the "female test battery" and the craft tests are similarly referred to as the "male test battery." This testing practice creates two separate universes, thus foreordaining the sexes' disparate careers.

The dual employment criteria then proliferate. Females are asked about their child care arrangements (even though Bell's own studies indicate that turnover for females with children is not substantially different from those without children) , their plans for marriage , their families' attitude toward their work , their husbands' permanancy , and whether they are pregnant. Females may also be in the subject of a "home visit" to acquaint the parents or family with the requirements of the job and determine the applicant's employa-bility.

Males, on the other hand, are required to meet an entirely different set of standards. They must have a valid driver's license and a good driving record , must have the physical ability and willingness to do craft work , and must pass a security clearance, none of which are required of females. Further, while female college graduates are recruited and employed in non-management position , there has been,

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at least through 1970, a "well-known" Bell System policy of not hiring male college graduates into non-management jobs.

A particularly incisive example of dual hiring criteria is found in the high school reference check forms used by New England Tel. in 1971. The form for females (headed "Miss") asks for grades in English, math, bookkeeping, typing, stenography, business machines and art. The comparable form for males (headed "Mr.") asks for the applicant's grades in English, algebra, plane geometry, solid geometry, trigonometry, physics, mechanical drawing, shop courses and languages. Once more, individuality is smothered by Bell's sex stereotypes.

"Neutral" criteria. In addition to these openly disparate hiring criteria, Bell uses "neutral" criteria which have a disadvantageous effect on females. At least one company, until 1971, disqualified the parents of illegitimate children from employment. But since the brunt of the responsibility for these children falls on the mother, women are, in practice, the only ones affected by such a rule.

Another such "neutral" standard is the minimum height requirement set by most operating companies for craft jobs. The companies have never demonstrated, however, that such requirements

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are compelled by business necessity. Quite to the contrary, their internal contradictions cast doubt on the relevancy of these standards. For instance, the minimum height for Frameworkers in Michigan Bell and South Central Bell, where there are substantial numbers of females, is 5'3" and 5'2", respectively. In Southwestern Bell, however, the minimum height for Framemen is 5'6". The disparate impact of this standard is obvious; many more males fall within the required range than females.

This dual hiring system, characterized by sexually disparate criteria and by neutral criteria with a disparate effect, when superimposed upon Bell's segregated recruitment techniques, assures the creation of two distinct universes. The brave souls who can resist the pressures to conform to this monolithic system are rare. Most either succumb to the stereotype or (like a male applicant for Operator in Bermingham who was refused consideration) they rebel and are thus rejected. The effect of the dual hiring procedures has been amply demonstrated throughout this report. Placement in segregated jobs is assured by funneling applicants through separate employment offices, through segregated interviewers and by applying disparate hiring standards. The system is designed to assimilate only those who are willing to accept the Bell stereotype of their sex; all others are marked as

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rejects for their audacity to be individuals.

PROMOTION

The Bell System has always boasted that it is an "up from the ranks" company. "An Introduction to the Bell System", prepared by AT&T, explains this policy as follows:

"Bell System policy is quite clear in this respect: promotions are made almost entirely from within the System, and all promotions are on the basis of merit. In the Bell System it is possible for any person, no matter how humble his starting position, to rise to any position within the System, provided only that his performance justifies it. Because of this, the Bell System has been called a 'pure meritocracy'".

One of the primary selling points for telephone company employment has been its career opportunities. A new employee adopted into the Bell family is, according to their recruitment literature, expected to stay with the Company until retirement and progress through the ranks of non-management and into management. Regrettably, this expectation is a myth for women. The "pure meritocracy" applies only to the privileged male class.

The most realistic expectation for women is a career

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that begins and ends in the Operator job. Women with 20, 30 or even 50 years of Bell System service are often still in the entry-level position of Operator. A Southwestern Bell study of turnover observed that , "In the minds of most Operators, chances for advancement are remote."

A large portion of the blame for the intolerable turnover among Operators and other female employees must be laid to the absence of promotional opportunities. In June, 1970, New England Tel.'s General Operations Supervisor described the following casual relationship between turnover and promotional opportunities.

Each year all departments lose a large number of people either because they are attracted by higher wages offered in other companies or they see no opportunity for advancement in their present position. This is particularly true of clerical personnel as well as other initial assignments such as Telephone Operator. We are sure many of these people could be retained in the Company if they had some indication that there would be a definite opportunity for progress sometime in the future.

His solution to this problem is, however, untenable. He suggested that female Operators and clericals be allowed to transfer to Service Representative, "the highest paying non-management

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position [for women] in the Company". This simply ameliorates the problem by transferring it from one female job to another. Dissatisfaction with promotional opportunities is almost as intense among Service Representatives as among Operators.

A 1970 Turnover study conducted by C&P (D.C.) indicated that 69% of all terminating Service Representatives were not satisfied with their chances for promotion. Typical comments were, "There is no real chance for advancement in the Company;" "I would not have terminated my employment with the Company if I felt I would have advanced within a year;" "I was impressed with the fact that women are discriminated against."

Structural obstacles. The concentration of females in the lowest job categories confirms their lack of promotional opportunities. There are five basic obstacles to females' progress in Bell's promotion system: (1) obscure, informal procedures, (2) sex-segregated lines of progression, (3) departmental seniority, (4) restricted transfer to entry-level jobs and (5) unreasonable standards for promotion to "male" jobs.

The procedures for obtaining promotion in most Bell companies are a mystery to both females and males. For females, however, the right to transfer to a "male" job is a closely guarded secret to which only male supervisors are privy. In 1966 the

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C&P companies agreed to consider women for framework but attached the following proviso:

It is not intended that employees will be encouraged to request such reassignments or that publicity will be given to the fact that such employee requests will be accepted or encouraged.

A female Southern Bell Frameman said in June, 1970, that "The kind of woman who usually applies for the [Frame] job is one who has worked with the Company for many years and so knows its ways."

One of the prime factors frustrating women's complete knowledge of and involvement in the promotion process is the almost total absence of bidding systems common in other industries. Only two companies, Southern Bell and South Central Bell, have bidding procedures. In the other companies an employee may request a promotion, either formally or informally, and may be considered if a vacancy should occur. Employees are not formally informed of vacancies or of the disposition of their promotion requests. Females, often confined to an isolated work area, would have little opportunity to learn of craft vacancies in such a disjointed system.

It is a cruel irony that when the companies began to "allow" women to enter higher-paying jobs, the route of those jobs continued to be an enigma.

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Segregated lines of progression. The second major barrier to female promotion is the segregation of lines of progression. The operating companies uniformly contend that there are no fixed promotion ladders in the sense that one job is an absolute pre-requisite for another. The companies' practice of training for all jobs following a promotion makes it unnecessary to have had work experience in a specific area prior to assignment to the job. Company job descriptions, personnel manuals and recruitment brochures do, however, describe lines of progression in non-management jobs. These are inevitably sex-segregated. Charts 11 and 12 show the basic progression in the female and male lines, respectively. Although promotions often occur between departments, only in abnormal cases do promotions occur between "male" and "female" jobs.

A particularly apt example of promotion channels based on sex occurs at Michigan Bell. As indicated in Chapter 2, the Switchroom Helper's job (Frameman in other companies) is an all-female craft job in Michigan. As outlined in Chart 12, the normal promotion for Frameman or Switchroom Helper would be to Installer-Repairman, Lineman or Switchman. In Michigan Bell, however, the normal progression for female Switchroom Helpers is gerrymandered to require promotion to Installation Order Clerk, a clerical job

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with a top rate of slightly less than Switchroom Helper. One's career is virtually predestined by the line of progression into which she or he is hired.

Seniority. The third structural impediment to females' promotion involves the application of contractual seniority provisions. In no company is seniority the controlling factor in determining who shall be promoted. The typical collective bargaining agreement provides that seniority shall be applicable only when two or more employees being considered are equally qualified as determined by the company. This relatively weak seniority standard gives the company almost unrestricted latitude in filling vacancies.

The definition of seniority varies from company to company, but the most common definition is "net credited Bell System service" or the total amount of time employed within the Bell System. In eight companies (Illinois Bell, Indiana Bell, Michigan Bell, New England Tel., New Jersey Bell, Ohio Bell, Pacific Tel. and Southwestern Bell), however, the application of seniority is on a departmental basis or employees within a department are given preferential consideration over all other applicants. Such a

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preference, imposed upon a structure of segregated departments, becomes a very substantial obstacle to females' progression.

For instance, should a female Operator, realizing the paucity of promotional potential in the Traffic Department, seek a craft job, she will be at a substantial competitive disadvantage with all Plant Department employees - the vast majority of whom are male. Females in Traffic may be considered for promotion only when there are no qualified persons within the Plant Department seeking the job.

The operating companies were not unaware of the discriminatory effect of such a departmental seniority system. In October, 1968, Illinois Bell's Legal Department determined that:

> Seniority groups set out in the contract...would be considered to be discriminatory since they establish separate groups for those wage groups which have been traditionally male jobs and those which have been female jobs. Therefore, if a Wage Group 14 [female] employee requests or is being considered for promotion, segregated seniority groupings should not have a bearing on the decision.

Their analysis of the law was totally accurate, but their ingrained prejudices brushed the law aside. In 1971 they stated unabashedly that "seniority within the department takes precedence

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over seniority from another department.".

Such a system of departmental preferences perpetuates and intensifies the disadvantage suffered by females when they were hired. They are effectively locked into the lowest paying jobs and prevented from competing on an equal basis with males.

Hiring v. transfer. A fourth structural impediment of the upward mobility of females has been the operating companies' predilection for filling entry craft jobs with new hires rather than lower-level employees wishing to transfer. Such promotions are quite attractive to females since virtually all male jobs pay more than virtually all female jobs. Yet until late 1970 all of the companies routinely preferred new hires over applicants for transfer. Southwestern Bell's callous position in 1967 was that, "The Company has the right to hire new employees into the Frameman title no matter how many employees already on the payroll want the job."

The justifications for this policy were two-fold. First, the operating companies had a consuming desire to maintain entry-level craft jobs as stepping stones to higher non-management and management positions. But because of Bell policies, women would not or could not be promoted out of entry craft jobs and

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would, therefore, create a bottleneck. Second, Bell reasoned that training costs would be doubled if females were allowed to transfer to entry crafts since both a new craftworker and a new Operator/clerical would have to be trained. According to this reasoning, a female would be forever indentured to her entry job, a slave to Bell's stereotypes.

Although all companies retain the unfettered right to hire into entry level, and all continue to fill most entry vacancies with new hires, most companies have now made paper provisions for equal consideration of employees wishing to transfer. Even this policy, if adhered to, gives the employee no credit for general experience with the company. It is a grim paradox that women who have proved their worth to the company over many years are treated as fledglings.

Promotion standards. The standards by which transfer applicants are judged present a fifth impediment to female promotion. Three general qualifications are paramount: (1) successful completion of the craft ("male") test battery, (2) craft experience and (3) satisfactory or above average performance in one's present job.

Bell's strict segregation of males and females at the time

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of pre-employment testing has a profound effect on their careers. The point was made quite graphically in a 1966 arbitration award involving New Jersey Bell:

> Succinctly, the pre-employment tests created two universes: the test given to females resulted in their being thereafter restricted from consideration for promotion to the universe of "male" jobs; even if they can qualify for a particular job in the male universe, they cannot be considered because their pre-employment test did not test their overall capabilities for all the vocational jobs.

With only two exceptions, females are consistently required to meet the same craft test standard as male craft hires. These exceptions, however, illustrate the fallacy of the entire requirement. First, Michigan Bell has for 20 years evaluated Switchroom Helpers (Framemen) on the basis of the "female" clerical test battery. The "necessary requirement" that females be measured in terms of craft aptitude seems to have been quite unnecessary in that instance. The second exception occurred in 1968 at Illinois Bell. After using females in Frame work during a Plant strike, Illinois Bell magnanimously decreed that those females would not be required to take the craft test battery to continue work on that job. Apparently, in such a service emergency the

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companies can choose qualified females for promotion without testing them. Further, C&P (D.C.) has allowed females to transfer between "female" jobs without meeting pre-employment test standards in recognition of the "value of previous experience and background." No company, however, has allowed such credit for females who move to craft jobs.

The disparity of this policy is particularly acute for females with long telephone company service. In many cases, their male contemporaries were hired into the crafts before the institution of the present tests and, therefore, have never been required to pass the current pre-employment tests battery. Now, females who were excluded from the crafts at the time of hire must hurdle an obstacle never placed before their male counterparts.

Prior experience. A second necessary requirement for promotion to certain craft jobs (Switchman, Deskman and others) is experience in a prior craft job. (A similar requirement of outside sales experience is made in some companies for promotion to higher outside sales jobs) This requirement is a classic example of "Catch 22" - females may not enter craft jobs because they have no craft experience, and they may not get craft experience

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because they are excluded from the crafts! In October, 1968, Illinois Bell indicated that its Legal Department...does not know of any ground on which we can make satisfactory job performance on another craft job an absolute prerequisite for promotion to Plant Assigner or any job to which an employee might request transfer or promotion.

Far from adopting this position, most companies continued to require craft experience. Southern Bell presents the most extreme example. In 1971 the Company indicated that "knowledge of the proposed job" was a major criterion in selecting an employee to fill a vacancy. Such knowledge, according to the Company, is generally acquired as a result of formal training or performing in the job on a relief basis. Yet since 1965 Southern Bell has refused to allow female Framemen to relieve as Switchmen even though this is a normal practice for males. The Bell Companies have asked women to meet a standard which is absolutely impossible for them to attain.

The third standard for promotion which operates to eliminate females is the universal requirement that an employee have satisfactory or above-average performance on her or his present job. Such a policy has an adverse effect on females in at

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least two ways. First, by requiring "above average" performance on the present job, half of the all females are automatically disqualified from consideration, regardless of their ability relative to males.

Second, and much more importantly, the nature of the jobs to which females are confined reduces the probability of their satisfactory performance. Dr. Laws explains the effects of discrimination on females' motivation in terms of "Expectancy-Value theory."

Under this model we can see that an individual can desire a goal greatly, but if she does not believe that she has a good chance of obtaining it, her effort will be small.

Applying this model to the Bell System, she has concluded that, "the overall effect would be to depress the work motivation of Bell's women employees."

It is completely consistent with the above model to assume that Operators, Service Representatives and clerks, whose expectation for promotion is slim, would be less interested in maintaining a high level of performance and, therefore, may be deemed "unsatisfactory" by their supervisors. Further, the extreme regimentation of the Operator's job, "beyond all proportion

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within the System" may contribute blots to her record that would not affect her performance in a craft job. Promotion to a more invigorating environment where initiative and ability are rewarded rather than suppressed may cause a flowering which would go unrecognized in the oppressive Traffic Department. By requiring satisfactory performance in dissatisfying jobs to qualify for promotion, the Bell System is undoubtedly losing a significant wealth of talented women.

The Bell companies have been oblivious to the structural difficulties inherent in their system which prohibit females' promotions. They have instead explained females' failure to be promoted with the stale argument that women just don't want craft jobs. This is simply not true. Given the same opportunities as men, women seek the same jobs for basically the same reasons - better pay and more interesting work. Most often, however, a woman's interest in a male job is frustrated or ignored by her male supervisor.

The grotesque exaggeration of the arduous duties associated with craft jobs has undoubtedly slaked feminine interest. A C&P (W.Va.) supervisor explained the Frameman's job to female clerks as follows:

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Girls, if you are serious about the Frame job, if you have examined the job requirements and are willing to climb around platforms and ladders, if you realize you are going to have rough hands with short or broken fingernails, if you think you can handle the tools and keep them in proper condition and do everything a man can do and in the same amount - then the company is willing to consider your request.

Surely this is not the same explanation given by Michigan Bell where all Frameworkers are female:

Arbitrator's awards in 1966 and 1967 rejected Southwestern Bell's similarly hackneyed contentions of arduousness for the Plant Assigner and Framemen jobs as "completely without merit," "not supported by any evidence whatever," and a "relatively minor part of the jobs". Bell's distorted discriptions of craft jobs have been further rebutted by the experience of females. They nevertheless serve as a significant discouragement to women seeking advancement.

Absence of role models. An additional factor which minimizes feminine interest in male jobs is the absence of role models in these jobs. Women (and men) are often quite reluctant to be the first pioneer in a new field. A Pacific Tel. Frameman said, "I knew there were several Framewomen so the idea of being

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the only girl didn't concern me." That concern, unfortunately, is quite real in most of the operating companies.

It is not at all surprising that few women have been willing to take on the entire male hierarchy of the Bell System. Most women who have advanced to "male" jobs have done so only after a lengthy struggle. Lorena Weeks, just such a woman, encountered all the might of Southern Bell when she bid on a Switchman's vacancy in March, 1966. It was to be five years before she would be awarded the job. Her story epitomizes women's collective struggle for promotion:

In March, 1966, a job was put up for bid for Switchman in the Louisville and Wadley exchanges. Since a Switchman's work is inside and involved equipment, some of which I had become familiar with as a telephone operator, I decided to bid on the job ....My bid for the Switchman's job in Wadley was returned. The only reason the Company gave for not letting me have the job was that I am a woman. The job went to the only other bidder, a man with less seniority than me.

Ms. Weeks then took her case to court and finally, in November, 1970, Southern Bell was ordered to place her on the Job of Switchman.

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Every day I thought the Company would tell me to report for work in Wadley. Time drug on all through Christmas and the Holidays, Each day I hoped to be placed on my new job. Nothing happened - finally my attorney was able to get another hearing before Judge Bell in March, 1971. I told him how pressed we were for funds to keep our now three children in college...He told me that before I left his chambers that day that he would issue an order and put me on the job the next day. He did and I went to work on March 3, 1971...

I am enjoying my work and am happier than I have ever been since working with the Telephone Company.

During the time I was waiting for a final decision I was criticized by both males and females. They seemed to think I was trying to take something from "the breadwinner" while I was only trying to prove that all men aren't breadwinners and that a loaf of bread costs a woman as much as it does a man.

It is little wonder that many women are discouraged from seeking "male" jobs by such examples.

Wage treatment. The disadvantage accorded to females in the promotion process does not end once she receives the

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promotion. The computation of wages following the promotion has the effect of perpetuating the inequities attributable to her sex. In April, 1965, Pacific Tel. determined that its union contracts might be in conflict with Title VII because...the rules governing computation of wage rates when changing wage schedules vary between men and women. Lenghth of service is used for men and whereas amount of money is used for women.

Despite this realization, Pacific Tel. negotiated a "Wage Administrative Practice" in 1968 (and revised in 1970) which continues the same distinctions. An example from the Pacific Tel. collective bargaining agreement in effect on January 1, 1971, is illustrative of the wage treatment procedures in all the companies following promotion. (See Chart 13). A male with 72 months service as a Frameman who is promoted to Station Installer will receive an increase from $152.50 per week to $166.50 per week. Should a female Operator with identical service be promoted to the same job and perform the same duties, her new wage will be only $124.00. Her wage, relative to the male Framemen with whom she was hired, has increased only slightly.

This same disparity continues through a hypothetical promotion to PBX Installer after 18 months. In this example, it

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will take the female four and one-half years to achieve parity with her male counterpart, and during that time she will have lost $6500 when compared to a male in the same classification and with the same company seniority.

This issue was treated in a 1967 arbitration award involving Southwestern Bell. The subject was broached following an Arbitrator's order to place a female clerk in a Plant craft job with appropriate back pay. The union subsequently grieved when the female was paid at a rate of only $95.50 per week rather than the $136.00 per week paid to her male predecessor. The Arbitrator held as follows:

The Company, in calculating the back pay for Bernita Brock, has not complied with the existing award in this case. It should accept the award as determining that women in the situation of [clerks promoted to craft jobs] are qualified for the positions the Arbitrators awarded them. Miss Brock's wage rate should be calculated on that basis.

This final inequity typifies the Bell's System's utter recalcitrance in promoting women through the non-management ranks. Their skills and ambitions are denigrated; avenues of promotion, when open to all, remain a secret; duel lines of progression,

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restrictive seniority systems and unreachable standards continue to prohibit females' promotion. As a final insult, the woman who achieves a higher position is paid less than comparably situated men in her job. In light of this closed promotional system, one is amazed that all Bell's women employees do not become tunover statistics.

Maternity Leave

The sexist, paternalistic attitudes of the Bell System extend beyond the recruitment, hiring and promotion of female employees. Rules and regulations regarding maternity further restrict women's employment opportunities in three ways: (1) requirements that mothers-to-be take a leave of absence at a particular time, (2) suspension of benefits normally given for other sickness disabilities and (3) failure to provide equitable reemployment guarantees.

Timing of leave. In 1971, eight companies (Indiana Bell, Michigan Bell, New England Tel., New Jersey Bell, Northwestern Bell, Ohio Bell, South Central Bell and Southern Bell) continued to require pregnant females either to resign or take leave of absence at the end of the sixth or seventh month. Not only is such a policy contrary to the medical requirement considered to be appropriate

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by leading gynecologists, but it is, according to Pacific Tel., detrimental to the company's interests:

From the Company's standpoint, it is important that there be no arbitrary rule requiring pregnant employees to leave their job at a specified time in the pregnancy period. Such a rule would be detrimental to the Company's interests in failing to utilize the services of experienced employees for as long as they meet the requirements of the job. Such a rule would also be detrimental to the employee's interest since it would not permit consideration of individual desires or economic needs....

Just as in all other matters dealing with employment, the employee must be treated as an individual, not as a member of a stereotyped racial, ethnic or sexual class. The timing of maternity leave should be contingent on the ability of the woman to do the job safely and not on the presuppositions of Bell's pseudo-physician managers.

Two other limitations on maternity leaves restrict females' employment. First, four companies (Mountain Bell, New England Tel., New Jersey Bell and Northwestern Bell) limit maternity leave to married females. Second, New Jersey Bell and Pacific Tel. require females to have at least nine months

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service before they may take maternity leave.

Suspension of benefits. The second major disadvantage accruing to females because of maternity is the suspension of benefits which are given during other sickness disabilities. Maternity leave is treated as a special leave, granted through the companies' largess, and not as an employee right. Thus, privileges granted during sickness are suspended during maternity leave.

Reemployment. The third disadvantage occurs at the end of maternity leave. Only Mountain Bell and South Central Bell offer guaranteed reemployment rights to a female taking leave. All other companies provide for reemployment only when there is a vacancy suitable to the employee's abilities. In New York the returning mother loses all promotions she may have earned prior to her pregnancy.

Operating employees will not be returned to duty [following maternity leave] as other than an Operator thus losing any other title held at the time the leave is granted.... Non-overtime employees will be returned to duty (provided there is work available) in the lowest clerical grade available in the unit.

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No other class of employees suffering a sickness disability is treated in such a manner. In all other instances the employee is welcomed back with no diminution of rights or benefits. As usual, only women are treated differently.

Summary

In order to maintain the sex segregation of the jobs throughout the System, the Bell companies use a variety of techniques that extend through the entire gamut of recruitment, hiring and promotion procedures.

Recruitment is largely through employee referral, high school presentations, and various forms of advertising. In all cases, the designation of each job as "male" or "female" is actively encouraged.

In the hiring process, from the time a potential application makes the first contact with the company until he or she is finally hired or rejected, one is treated in entirely different ways depending on the sex of the applicant. This dual processing includes different interviewers, different interview questions, different test batteries, and the use of different hiring criteria.

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Promotion from "female" jobs to "male" jobs or vice versa is severely inhibited by a number of obstacles including the deliberate obfuscation of opportunities and procedures, the maintenance of sex-segregated lines of progression, departmental seniority (which is tantamount to sex-group seniority), provisions restricting transfers, and unreachable promotion standards.

Arguments about female "job interest" or "arduousness" have been shown to be meritless.

The lack of appropriate role models and inequitable wage treatment following promotion discourage females' transfer to "male" jobs.

Unreasonable and discriminatory maternity leave provisions further restrict the opportunities of female employees.

The Bell System was perfectly aware that recruitment brochures picturing only females were unlawful, that segregated employment offices would deny females access to craft jobs and that departmental seniority had a disparate impact on women. But the overriding consideration was to prevent female "contamination" of "male" jobs.

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The "pure meritocracy" claimed by Bell exists only for males. For females, competition and its rewards are limited to the feminine sphere. While telephone employment can be a rewarding vocation for men, it can be no more than a way station for women, a mockery of their career aspirations.

* * *

CHAPTER 6. CONCLUDING COMMENTS REGARDING SEX DISCRIMINATION

The Bell monolith is, without doubt, the largest oppressor of women workers in the United States. This harsh conclusion is inescapable in light of the discussion in the previous chapters. Bell's women are forced either to adjust their ambitions downward to conform to the company's restrictive expectations or to seek more rewarding work with another employer.

Bell's policies toward women are morally and ethically indefensible and since July 2, 1965, they have been against the law. Nevertheless, the discrimination continues.

It is difficult to quantify all of the effects of this discrimination. Statistical measures omit the <u>real</u>, <u>human</u> tragedies testified to by Ms. Weeks and Ms. Roig. Sterile,

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economic measures cannot be ignored, however, for if they indicate enormous financial deprivation, surely the intangible consequences of discrimination are severe.

The magnitude of the discrimination. By every standard females at Bell are disadvantaged, but the most dramatic measure is in terms of lost wages. Because women in the 30 SMSA's are not distributed equitably through the whole range ofavailable jobs, they lose $422 million every year. (See Chart 16.) Nationwide in the Bell System women lose $950 million annually.

Dr. Ronald Oaxaca, an economist at the University of Western Ontario, has calculated that, if differences in the personal characteristics (i.e., age, education, etc.) of females and males are taken into consideration, "the effects of discrimination account for roughly 55% of the observed male-female wage differential in the telephone industry." Thus, Bell's incumbent female employees, given their age, education and experience, are paid an aggregate of $500 million per year less than males with comparable personal characteristics.

Effect on Rates. Other economists have estimated that this differential attributable to discrimination could

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have a significant effect on telephone rates. If AT&T had operated to minimize labor costs (i.e.employed workers at the lowest possible wage, regardless of sex), they would have employed large numbers of women in all job categories. The total effect of this savings would have been an annual reduction of 2% to 4% in overall telephone rates.

There can be no plausible rationalization for the vast disparities between females and males detailed in this report. Bell's culpability is virtually absolute. First, Bell has consciously, overtly and intentionally excluded females from the more remunerative jobs. The barriers to women's entrance into, and progression within, the Bell hierarchy are legion and virtually insurmountable.

Second, the segregation of the sexes practiced by Bell is far more extensive and intensive than that practiced by the society at large. The diverse skills and aspirations of women have been recognized by more progressive employers for some time. While sex segregation is not peculiar to the Bell System, Bell is certainly the archtype.

Third, despite Bell's presumed "unique competence" to improve the status of the female worker, they have been incredibly timid and reactionary. The telephone company,

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through its nationwide advertisements, repeated contacts with the public and civic leadership in the communities it serves, has a special opportunity to influence public opinion. They have, however, rejected this role in favor of an active stimulation of the societal impediments to the employment of females and males on an equal basis.

An affirmative obligation. A century of discrimination against women will not be reversed by passive dictums that women will now be "allowed" to enter previously male jobs. Bell's history is replete with examples of conscious, calculated action to discourage interest in "opposite sex" jobs. Their affirmative obligation to eliminate these pervasive inequities is now overwhelming.

* * *

EXHIBIT B ANNEXED TO BRIEF
OF DEFENDANT APPELLEE BELOW

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE
WASHINGTON, D. C. 20210

November 12, 1970

MEMORANDUM

TO: HEADS OF AGENCIES

FROM: John L. Wilks
Director

SUBJECT: Questions and Answers Concerning
Sex Discrimination Guidelines

To assist Contract Compliance Officers in interpreting the Sex Discrimination Guidelines, attached is a series of questions and answers covering the major provisions of the Guidelines.

Attachment

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I. General Questions

1.

Q. Who is covered by the Guidelines?

A. All Federal contractors and subcontractors subject to Executive Order 11246, as amended, are covered by the Guidelines. See 41 CFR, Section 60-20.1.

2.

Q. Does Order No. 4 apply to discrimination and underutilization on the basis of sex?

A. No. The concepts embodied in Order No. 4 are applicable to sex discrimination. However the specific procedural requirements of this Order, particularly those developed for determining underutilization and for determining exact goals and timetables, are not applicable.

The Department of Labor will develop procedural requirements for meaningful goals and timetables pursuant to the results of consultations with private groups and meetings with an advisory panel suggested by the groups.

3.

Q. Why doesn't Order No. 4 apply to discrimination and underutilization on the basis of sex?

A. The procedures developed in Order No. 4 for determining underutilization are not entirely appropriate to meet the more difficult and elusive problems of sex discrimination because of differences in work force patterns and participation rates in the labor force and certain occupations.

II. Specific Questions

1.

Q. When recruiting, must a contractor actively recruit for employees of both sexes for all jobs?

A. Yes. He must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification. See 41 CFR, Sections 60-20.2(a), 60-20.5(b), and 60-20.6(a).

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2.

Q. What is a bona fide occupational qualification for a job?

A. Any qualification justifying the exclusion of men or women from any given job must meet one of the following standards:

(1) A need for authenticity or genuineness, such as actors or models;

(2) The need to avoid offensiveness of public standards of morality or propriety, such as a lingerie saleslerk;

(3) In jobs in the entertainment industry, for which sex appeal is an essential qualification, such as a chorus dancer, male or female.

3.

Q. May a contractor advertise in newspaper columns headed "male" or "female" or express a sex preference in the body of an advertisement?

A. No. Advertisements must not express a preference unless sex is a bona fide occupation qualification for the job. An advertisement in columns headed "male" or "female" will be considered an expression of a preference, limitation, specification or discrimination based on sex. See 41 CFR, Section 60-20.2(b).

4.

Q. What kind of affirmative action is required for recruiting women?

A. There are a variety of methods by which this can be achieved, just as there are with other forms of discrimination. Advertisements can be designed to indicate that women will be considered equally with men for jobs. Where appropriate, recruiting itineraries should include women's colleges and women students of co-educational institutions. See 41 CFR 60-20.6(a).

5.

Q. Does it violate the guidelines for a contractor to have different mandatory or optional retirement ages for men or women?

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A. Yes. The contractor must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age. See 41 CFR, Section 60-20.3(h). Where such differences now exist, contractors must eliminate them immediately or make commitments to eliminate them within a stated period of time which is reasonable under the circumstances.

6.

Q. What is a contractor's obligation with respect to fringe benefits?

A. The contractor must provide equal money contributions or equal benefits for insurance, pensions, welfare programs and other similar fringe benefits received by men and women. This rule is consistent with the long established interpretation of the Equal Pay Act, which the Department of Labor also administers. The Equal Pay Act is a 1963 Amendment to the Fair Labor Standards Act, requiring equal pay for women. See 29 CFR, Section 800-116(d). OFCC's interpretations are designed to assure that there will be a uniformity of approach among Federal programs for equal opportunity. See 41 CFR, Section 60-20.3(c).

7.

Q. The Guidelines state that the conditions for maternity leave should be in accordance with the contractor's leave policy. Does this mean that women have to accept whatever policy a contractor may have?

A. No. As the Guidelines expressly state in several phrases in 41 CFR, Section 60-20.3(g), the leave policy must be reasonable and must not penalize women because they require time away from work because of childbearing. It is essential that the contractor's basic leave policy is nondiscriminatory in nature and does not operate adversely to women.

8.

Q. Must a contractor reinstate women employees when they wish to return from maternity leave?

A. Yes. Childbearing is a justifiable cause for leave of absence for a reasonable period of time. The employee must be given either her original job or a position of like status and pay, without loss of service credits. This answer is stated in the last several lines of 41 CFR, Section 60-20.3(g) of the Guidelines

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regarding the requirements of contractors with no leave policy. This interpretation, of course, applies equally to contractors who do have a leave policy for the Guidelines require that women shall not be penalized in connection with maternity leave.

9.

Q. The Guidelines require that a female employee shall be reinstated to her original job or to a position of like status and pay without loss of service credits after an absence for childbirth. Does this mean that such employees must continue to accrue service credits during their leave of absence?

A. (1) It depends on the employer's policy for other types of leave.

(2) Female employees on leave of absence for childbearing must continue to accrue all seniority credits during their absence, including seniority rights for job security, promotion, and pensions and other fringe benefits if the same policy applies to other types of leave. See 41 CFR, Section 60-20.3(g).

10

Q. May a contractor specify the time when maternity leave shall begin?

A. Not normally. This is primarily a medical decision which is not reasonable for a contractor to make in terms of a blanket policy. The time when a woman leaves before childbearing is normally a matter between the pregnant employee and her doctor. See 41 CFR, Section 60-20.3(g).

11.

Q. What reinstatement rights do women have upon returning from maternity leave?

A. A female employee returning from maternity leave must be reinstated to her previous job. However, if for justifiable, nondiscriminatory reasons, her previous job is not available to her (i.e., reorganization, elimination of function) she must be offered another job with similar status and pay. If and when her previous job becomes available again, she must be reinstated in that position without loss of service credits accrued from the interim job. See CFR, Section 60-20.3(g).

EXHIBIT B

12.

Q. Do the Guidelines require paid maternity leave?

A. No. There is no requirement that an employee be paid during her absence. See 41 CFR, Section 60-20.3(g).

13.

Q. May a contractor's employment policies be applied differently to married and unmarried women?

A. No. Any such distinction will be considered discriminatory on the basis of sex. See 41 CFR, Section 60-20.3(d). of the Guidelines. For example, employment cannot be denied to women with young children. Similarly, a contractor must apply maternity leave policies in the same manner to married and unmarried women.

14.

Q. May a contractor refuse to hire, train or promote women on the basis of marital or family status?

A. No, unless he likewise refuses to train or promote married man. Any distinction that a contractor makes between married or unmarried persons must be equally applied to both sexes. In other words a contractor cannot refuse to hire a woman with young children unless he uses the same exclusionary policy with men. See 41 CFR, Section 60-20.3(d).

15.

Q. May a contractor exclude women from jobs which he believes are dangerous or "unsuitable" for women to do?

A. No. Unless there is a bona fide occupational qualification, he must allow women as well as men to apply for such jobs. Hiring must be based on individual qualifications. Working condition standards should apply equally to both sexes. See 41 CFR, Section 60-20.3(b) and (f).

16.

Q. Do the Guidelines supersede state and local laws which restrict the employment of women?

A. Yes. A contractor may not use state or local laws as an excuse for excluding women from certain jobs. Women must be offered jobs for which they are qualified, even if there is a state law, such as a night work law, an hours' law or a weightlifting law. See 41 CFR, Section 60-20.3(f).

EXHIBIT B

17.

Q. If there are separate seniority lines or lists based solely upon sex, what action must the contractor take?

A. Any such separation must be eliminated. See 41 CFR, Section 60-20.4

18.

Q. Must contractors recruit females for management trainee programs?

A. Yes. An important element of affirmative action shall be a commitment to include women in such programs. See 41 CFR 60-20.6(b).

19.

Q. Must a contractor permit women to participate in apprenticeship training programs?

A. Yes. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the employer that such access has been provided. See 41 CFR, Section 60-20.6(c).

EXHIBIT C ANNEXED TO BRIEF OF
DEFENDANT APPELLEE BELOW

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department, Plaintiffs,	Civil Action No. 73-3353 WK
v.	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT, Defendant.	AFFIDAVIT

STATE OF NEW YORK :
: ss.:
COUNTY OF NEW YORK :

BERNARD M. KEADY, being duly sworn, deposes and says:

1. I am the Assistant Secretary of the Long Lines Department Benefit Committee of the American Telephone and Telegraph Company, Long Lines Department ("Long Lines"). The Long Lines Department Benefit Committee administers the Plan for Employees' Pensions, Disability Benefits and Death Benefits (the "Plan"); as Assistant Secretary to the Committee, I am fully familiar with the purposes, contents and administration of the Plan.

2. One of the basic purposes of the Plan, a copy of which is attached as Exhibit 1-D to Long Lines' Answers to Plaintiffs' First Interrogatories, is to provide weekly wage continuation benefits to Long Lines employees who are temporarily disabled to work

EXHIBIT C

because of non-occupationally related sickness or injury. Payments under the Plan commence on the eighth calendar day of disability and continue up to a maximum of 52 weeks. The ratio of weeks of benefits at full pay rates to weeks of benefits at half pay rates depends upon the employee's length of service. For example, an otherwise eligible employee with two to five years of service is entitled to benefits under the Plan at full pay rates for the first four weeks of absence due to a covered disability and at half pay rates for the next 48 weeks.

3. The Plan covers absences from scheduled work of active employees with at least six months of service which are due to sickness or injury, provided that the employee has sought and accepted adequate treatment and is willing to furnish Long Lines with documentation concerning the condition and the treatment. Subject to the same conditions, absences due to disability caused by elective surgery are covered by the Plan. Benefits are provided under the Plan to active employees for disability absences resulting from pregnancy complications and abnormal pregnancies, but not for absences attributable to normal pregnancy and childbirth.

4. Benefits are provided under the Plan for absences due to the causes and under the conditions described above without regard to the sex of the employee; there is no condition which is covered when experienced by males and excluded when experienced by females, and there is no condition which is covered when experienced by females and excluded when experienced by males.

EXHIBIT C

5. The following statistics in regard to the operation of the Plan for fiscal years 1971, 1972 and 1973 were compiled from Long Lines' business records:

DAYS OF ABSENCE FOR WHICH BENEFIT PAYMENTS WERE MADE UNDER THE PLAN

July 1970 - June 1971

To Males	To Females	Total
35,655	35,686	71,341

July 1971 - June 1972

47,655	46,473	94,128

July 1972 - June 1973

42,742	45,319	88,061

TOTAL EMPLOYMENT BY CALENDAR YEAR

	Male	Female	Total	Percent Male	Percent Female
1970	22,527	13,109	35,636	63.21	36.79
1971	22,962	11,302	34,264	67.01	32.99
1972	23,269	12,080	35,349	65.83	34.17
1973	23,265	12,172	35,437	65.66	34.34

Respectfully submitted,

BERNARD M. KEADY

Sworn to and subscribed before me this 9th day of July, 1974.

Notary Public

My Commission Expires:

SUPPLEMENTAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendants.

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

It is hereby ordered that the two letters attached hereto dated July 17, 1974 by the respective counsel for the plaintiffs be made part of the record in this case.

SO ORDERED.

Dated: New York, New York
July 31, 1974.

WHITMAN KNAPP, U.S.D.J.

LETTER FROM MARY K. O'MELVENY
ANNEXED TO SUPPLEMENTAL ORDER

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JEAN TAYLOR

JULIA C. ALGASE

July 17, 1974

BY HAND

Honorable Whitman Knapp
Judge, United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: CWA, Skipper, et al v. American Telephone and Telegraph Co., Long Lines Department
73 Civ. 3353 W.K.

Dear Judge Knapp:

Pursuant to plaintiffs' request at oral argument July 11, 1974 for permission to submit proposed questions to be addressed by the Court in the event of sua sponte dismissal, we have prepared the following list of inquiries which we hope will be considered in the Court's opinion.

Plaintiffs have been authorized by Linda Colvard Dorian, Esq., attorney for the Equal Employment Opportunity Commission, Amicus Curiae, to inform the Court that these suggested questions are those which Amicus also believe to be appropriate for consideration in the event of dismissal and are thus being submitted on behalf of the Commission as well.

1. Does the decision of the Supreme Court in Geduldig v. Aiello, including footnote 20, apply to the private employment relationship governed by Title VII of the Civil Rights Act of 1964, as amended?

COHN, GLICKSTEIN, LURIE, TRIN & LUBELL

Hon. Whitman Knapp

July 17, 1974

2. Does Geduldig v. Aiello mean that Congress is without the power under Title VII to include classifications based upon pregnancy within the area of prohibited sex discrimination in the employment field, absent a showing that such classifications are a pretext for invidious discrimination?

3. The Equal Employment Opportunity Commission has determined, in its Guidelines on Sex Discrimination (29 C.F.R. §1604.10), that an employer's refusal to treat disabilities caused or contributed to by pregnancy the same, for all job-related purposes, as all other temporary disabilities constitutes prohibited sex discrimination in employment. Is this determination entitled to weight in ascertaining the scope of prohibited sex discrimination under Title VII?

4. Does the decision in Geduldig v. Aiello, including footnote 20, mean that where an employer classifies pregnancy in a manner which has a disparate impact upon the employment status of a definable class of female employees, no prima facie sex discrimination under Title VII exists?

5. In the absence of an allegation of employer conduct amounting to a "pretext for invidious sex discrimination", is plaintiffs' challenge under Title VII to the defendant's practices and policies concerning pregnancy disabilities foreclosed by Geduldig v. Aiello, despite the fact that such policies have the following impact upon female employees disabled by pregnancy which were not involved in the California insurance program considered by the Supreme Court:

(a) loss of benefits for all disabilities unrelated to pregnancy once maternity leave commences;

(b) loss of basic medical insurance coverage or assumption of insurance premium payments;

(c) loss of service credit in excess of 30 days which affects

(1) pension entitlement;

(2) promotional opportunities;

(3) increased susceptability to layoffs;

(4) future entitlement to disability benefits;

(d) mandatory dates of leave which may not coincide with need or desire to cease full-time employment;

(e) uncertain reinstatement rights which affect

(1) departmental wage progression credit;

(2) loss of all service credit affecting all of the areas set forth in (c)(1) through (4) above;

(f) possible discharge or involuntary termination of employment?

6. In the absence of an allegation of employer conduct amounting to a "pretext for invidious sex discrimination", is plaintiffs' challenge under Title VII to the defendant's practices and policies concerning pregnancy disabilities foreclosed by Geduldig v. Aiello, despite the fact that defendant's disability benefits plan is unlike the California insurance program considered by the Supreme Court in the following respects:

(a) There is no separate, definable or limited "Fund" from which benefits are paid to disabled employees;

(b) In any given year, benefits would be paid to disabled employees despite a great or unusual increase in a presently covered disability category (e.g., infective diseases; accident, poisoning or violence, respiratory diseases);

(c) Defendant's employees do not in any way support or contribute to benefits paid under the disability benefits plan?

7. Are the standards of justification for classifications which have a disparate impact under Title VII (i.e., bona fide occupational qualification or business necessity) more stringent than the 14th Amendment rational basis test applied in Geduldig v. Aiello?

8. What are the components of a cause of action alleging that an employer's classification of pregnancy is a "pretext for invidious discrimination"?

O'MELVENY LETTER

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

Hon. Whitman Knapp

July 17, 1974

In connection with Question Number 8, plaintiffs have reviewed the proposed questions submitted for the Court's consideration in Women in City Government United, et al v. The City of New York, et al., 74 Civ. 304, also before the Court on the issue of sua sponte dismissal, and are in agreement with the formulation of Questions 2 and 3 dealing with the scope and content of a cause of action involving conduct which is a "pretext for invidious discrimination." Plaintiffs herein similarly urge that consideration of these questions is appropriate in light of the Court's indication at oral argument that an order dismissing plaintiffs' complaint would permit filing an amended complaint alleging that the defendant's treatment of pregnancy disability was a pretext for invidious discrimination, a cause of action remaining under the Court's interpretation of footnote 20. Rather than repeat these proposed Questions herein, plaintiffs desire to indicate their agreement with and adoption of their formulation by Ms. Walster in her submission to you.

Plaintiffs have not addressed themselves to those questions formulated by Ms. Walster concerning issues of Equal Protection under the Fourteenth Amendment insofar as our complaint is limited to a Title VII claim, and does not include an Equal Protection challenge to the defendant's policies and practices concerning pregnancy.

We respectfully urge the Court, in determining the instant sua sponte motion, to consider the above questions for the guidance of plaintiffs and the appellate courts in the event of an unfavorable decision.

Respectfully submitted,

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL

By: Mary K. O'Melveny
Mary K. O'Melveny

Attorneys for Plaintiffs

* * *

LETTER FROM K. RANDLETT WALSTER
ANNEXED TO SUPPLEMENTAL ORDER

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July 17, 1974

Honorable Whitman Knapp
United States District Judge
United States District Court
for the Southern District of New York
Foley Square,
New York, New York

Re: Women in City Government United, et al.,
v. The City of New York, et al.
74 Civ. 304

Dear Judge Knapp:

At the hearing on the court's motion to dismiss the above-entitled action July 11, 1974, plaintiffs' counsel requested permission to submit questions to you which you, in your opinion ordering dismissal, might appropriately address. We respectfully request that you consider the issues framed below in your decision.

At the July 11 hearing, you indicated that the order dismissing plaintiffs' complaint would permit the filing of an amended complaint if plaintiffs were able to allege that defendants' exclusion of disability benefits for pregnancy and pregnancy-related disabilities was adopted as a pretext for sexual discrimination. We urge that your decision provide some guidance and direction as to the requisites for such a "pretext" allegation, and in this regard, we respectfully direct your attention to Questions 1, 2 and 3 below.

WALSTER LETTER

Honorable Whitman Knapp
July 17, 1974

I. Plaintiffs' Constitutional Claim.

1. In alleging denial of equal protection in an employment context for exclusion from disability benefits of pregnancy and pregnancy-related disabilities, must plaintiffs, in order to state a claim upon which relief can be granted, allege that the classification is a "pretext for discrimination" on the basis of sex? (See Gedulding v. Aiello, 42 U.S.L.W. 4905, 4908, fn. 20.)

2. Does the concept of "pretext for discrimination" require an allegation of willfullness, hostile motive or some other element of bad faith?

3. If the concept of "pretext for discrimination" does not necessarily imply bad faith, is "pretext" established, prima facie, if the classification results in a disadvantaged class:

a) which includes all women and only women? e.g., excluding all people with cervixes from disability benefit plans.

b) which includes all women and few men? e.g., in a plant where the office staff is 95% women, and the factory workers are all male, a classification which excludes office workers from disability benefit coverage.

c) which includes both men and women but affects them unequally? e.g., excluding from disability benefits all people under 150 lbs. in weight and 5'8" in height. If such a classification could show pretext, what degree of disparate impact is required before the classification is prima facie impermissible?

d) which includes only women but does not affect them uniformly? e.g., excluding disability benefits for pregnancy and pregnancy-related disabilities.

Honorable Whitman Knapp
July 17, 1974

e) which includes only women and affects nearly all but does not affect them uniformly? e.g., excluding disability benefits for pregnancy, menstrual disorders, breast and uterine cancer, vaginal inflamatory disease, etc.

4. Is an employer who has classified employees as "pregnant women" and "non-pregnant people," and excluded from disability benefits pregnancy and pregnancy-related disabilities, required to establish that such a classification has a "reasonable basis" in the context of accomplishing a legitimate business purpose? (See Aiello, fn. 20.)

II. Plaintiffs' Title VII Claims.

5. Does the decision in Aiello govern actions brought under Title VII of the 1964 Civil Rights Act?

6. Is a prima facie violation of Title VII for discrimination on the basis of sex stated by an allegation of

(a) classification resulting in a disparate impact upon the employment status of a definable group of female employees?

(b) explicit classification by gender?

(c) classification as a "pretext for sex discrimination?"

7. Is the concept "pretext for sex discrimination" the same under both the 14th Amendment and Title VII? (See Questions 2 and 3.)

8. Under Title VII, are the standards of justification for classifications with resulting sexual impact, i.e. bona fide occupational qualification or business necessity, more stringent than the "reasonable basis" test applied in Aiello?

WALSTER LETTER

Honorable Whitman Knapp
July 17, 1974

III. Factual Variations from Aiello.

9. Are plaintiffs' challenges under the 14th Amendment or Title VII to the following plans and policies of defendants, none of which was presented in Aiello, foreclosed by that decision in the absence of an allegation of "pretext for sex discrimination?"

(a) disability plans which exclude all disabilities (both normal and pathological) related to pregnancy and maternity;

(b) plans which provide only nominal hospitalization benefits for pregnancy and maternity;

(c) plans which provide restricted health and medical benefits for pregnancy and maternity;

(d) plans which impose mandatory maternity leaves on pregnant employees and which

(i) preclude an employee from utilizing accrued annual or sick leave, and

(ii) interrupt the continuity of employment for seniority, promotion and raises, and

(iii) trigger disqualifications from other fringe benefit programs.

10. Would the Aiello rule apply to a Title VII or 14th Amendment claim based upon exclusion of disabilities relating to breast and uterine cancer, or to disabilities resulting from sickle cell anemia? If not, is there a distinction between classifications based upon those conditions and one based upon disabilities resulting from pregnancy?

Respectfully submitted,

RABINOWITZ, BOUDIN & STANDARD

By: K. Randlett Walster
K. Randlett Walster

krw:mb

* * *

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs-Appellants,

against

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Long Lines Department,

Defendant-Appellee.

On Appeal from The United States District Court for The Southern District of New York

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Sarita Puebla, being duly sworn, deposes and says: That she is over twenty-one years of age: That on the 31st day of October 1974 she served one copy of the attached Joint Appendix on each of the following named by enclosing said copies in fully post-paid wrappers addressed as follows and depositing same in The United States Post Office maintained at No. 150 Christopher Street, New York City, New York.

Thompson Powers, Esq.
Steptoe & Johnson
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Linda Colvard Dorian, Esq.
Equal Employment Opportunity Commission
General Counsel
1206 New Hampshire Avenue
Washington, D.C. 20007

Sarita Puebla
Sarita Puebla

Sworn to before me this

31st day of October 1974

Quinton C. Van Wynen

QUINTON C. VAN WYNEN
Notary Public, State of New York
No. 24-4927465

SERVICE OF ~~THREE~~ ONE (1) COPIES OF THE WITHIN

Joint Appendix IS HEREBY ADMITTED

THIS 31st DAY OF Oct 1974

J. G. Kilpatrick

Attorney(s) for RMW